IN THE

# Supreme Court of the United States

OCTOBER TERM, 1977

NO. ~~77~~ - 874

GENANETT ALEXANDER, *et al.*,
*Petitioners,*

*vs.*

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *et al.*
*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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## OPINIONS BELOW

The opinion containing the findings of fact and conclusions of law of the United States District Court for the Southern District of Indiana is unreported and is reproduced in the Appendix at page A-1. The opinion of the United States Court of Appeals for the Seventh Circuit, is reported at 555 F.2d 166, and is reproduced in

the Appendix at page A-6. The order of the Court of Appeals denying plaintiffs' Petition for Rehearing *En Banc* is reproduced in the Appendix at page A-17.

## JURISDICTION

The judgment of the Court of Appeals was entered May 20, 1977. The order denying plaintiffs' Petition for Rehearing *En Banc* was entered September 19, 1977, and this Petition is filed within 90 days of that date. The jurisdiction of the Supreme Court is invoked pursuant to 28 U.S.C. Sec.1254(1).

## QUESTION PRESENTED FOR REVIEW

Whether tenants who reside in a housing project acquired by the United States Department of Housing and Urban Development [HUD] and who are ordered by HUD to vacate their residences pursuant to written notices issued by HUD for its property disposition program are "displaced persons" under Section 101(6) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Sec.4601(6), and thus entitled to relocation assistance.

## STATUTORY PROVISIONS INVOLVED

This case involves the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [URA], 42 U.S.C. Secs.4601-4626. The relevant provisions are reproduced in the Appendix at page A-19.

## STATEMENT OF THE CASE

### A. Summary of the Facts

Petitioners (hereinafter "tenants") are low- and moderate-income persons who formerly resided at River-



house Tower Apartments [Riverhouse], a 294-unit project located in Indianapolis, Indiana. Riverhouse originally was built by a non-profit corporation, Riverhouse Apartments, Inc., which secured permanent financing for the complex through a mortgage insured and subsidized by HUD under Section .221(d)(3) of the National Housing Act as amended, 12 U.S.C. Sec. 1715*l*(d)(3).

In July, 1970, Riverhouse Apartments, Inc., defaulted on its mortgage, and in December, 1970, the mortgagee assigned the mortgage to HUD. When the default persisted, the United States initiated foreclosure proceedings in May, 1973, and a court-appointed receiver operated Riverhouse until it was purchased by HUD at a Marshal's sale on August 13, 1974.

After purchasing Riverhouse, HUD hired a management agent to carry forward general management responsibilities including entering into new leases and making authorized repairs. However, during this time, HUD decided not to rehabilitate the property, and, in fact, permitted the buildings to sink into such a state of decay that in November, 1974, HUD could declare that the tenants' interests would best be served by closing the project.

During this same period following purchase HUD began formulation of its property disposition program by evaluating its options. A number of alternatives were available to HUD. For example, HUD could have decided to retain ownership of Riverhouse and rehabilitate all or part of the complex, make essential repairs, or make no repairs at all. Further, in deciding to retain Riverhouse, HUD could have honored existing leases and entered into leases with new tenants; or it could have demolished the property or held it as an investment. In the alternative,

HUD could have chosen to sell the property either rehabilitated or "as is", and could have provided a new owner with subsidies and mortgage insurance. From among these options, HUD chose to evict the tenants, close Riverhouse and hold it for future investment opportunity.

In closing the project, HUD also decided to impose the financial burden of relocation upon the tenants and, indeed, HUD provided the tenants with no relocation assistance whatsoever. HUD also decided that it was in its own best interest not to disclose its plans for the future of the Riverhouse until this litigation was completed.

### B. Course of the Proceedings

The tenants initiated this litigation in December, 1974, to prevent the closing of their apartment buildings. They sought an injunction requiring HUD to make essential repairs and to keep the project open. Alternatively, the tenants prayed for a declaration that should the project be closed, the tenants were entitled to benefits under the URA. Following the closing of the project, the tenants filed an Amended Complaint in which they asked for URA benefits and the return of some security deposits. Jurisdiction of this cause was conferred on the District Court by 28 U.S.C. Sec. 1337, 28 U.S.C. Sec. 1346, and 5 U.S.C. Sec. 701.

### C. The Rulings Below

On the basis of these facts, the district court held that the tenants were not "displaced persons" under the URA, and thus were not entitled to URA assistance.[1] In so holding, the district court concluded that the "termination of the present use of Riverhouse Tower Apartments is not a 'program or project undertaken by a federal agency' to which the provision of the Uniform Relocation Act append." Further, the district court concluded that the tenants were ineligible to receive URA benefits because the "type of federal financial assistance received by Riverhouse Tower Apartments under the National Housing Act is excluded from the definition of 'federal financial assistance' set forth in the Uniform Relocation Act, 42 U.S.C. Sec. 4601(6)."

1 The District Court also ruled that the tenants were not entitled to the return of their security deposits.



On appeal, the United States Court of Appeals for the Seventh Circuit affirmed the judgment of District Court. Relying upon *Caramico v. Secretary of HUD*, 509 F.2d 694 (2d Cir. 1974), the Seventh Circuit concluded that the eviction of tenants from federally owned housing projects following foreclosure is not the sort of displacement to which benefits attach under the URA. The Seventh Circuit delineated those circumstances under which the URA is applicable, declaring that a displaced person qualifies only where governmental activities involve "the acquisition of land to accomplish an objective benefitting the public or fulfilling a public need." 555 F.2d at 170. Because the court of appeals concentrated on the termination of the previous Section 221(d)(3) program and ignored the property disposition program required by 24 C.F.R. Part 270,[2] the court concluded that the closing of Riverhouse could not be considered such a program or project. In consequence, the Seventh Circuit held that the tenants were not "displaced persons" within the meaning of the URA.

2 See also, *HUD Property Disposition Handbook, Multi-Family Properties*,4315.1.

## REASONS FOR GRANTING THE WRIT

### A. The Decision Below Conflicts With A Decision Of The United States Court Of Appeals For The District Of Columbia Circuit

The instant case is in direct conflict with *Cole v. Harris*, Nos. 75-2268, 75-2269 (D.C. Cir., Nov. 14, 1977). *Cole* involved the displacement of residents of Sky Tower, a housing project located in Washington D.C., which was purchased in 1970 by a non-profit corporation with HUD mortgage insurance and subsidies. HUD subsidized the interest rate on the mortgage under a program designed to bring rents within the reach of low- and moderate-income families.[3] Upon default, the mortgagee foreclosed the mortgage and conveyed title to HUD in exchange for mortgage insurance proceeds. Thereafter, HUD hired a management firm to operate the project. However, a year later, HUD concluded that the project was blighted, vandalized, unsafe and unattractive. Accordingly, HUD decided to forego rehabilitation and instead, ordered residents to vacate the project and began to demolish the structures. In response, Sky Tower residents filed suit seeking to prevent further demolitions and a declaration that the URA was applicable to the tenants ordered to vacate.

*Alexander* and *Cole* share a common nucleus of operative facts. Both involved multi-family housing projects insured and subsidized by HUD. Following default by private mortgagors, HUD acquired, operated and closed the projects, and evicted the residents as a part of its property disposition program. In both cases, HUD refused to provide URA assistance to the residents, forcing them to search for shelter in tight housing markets made even tighter by the closing of these projects.

3 Section 236 of the National Housing Act, 12 U.S.C. Sec. 1715z-1. The Section 236 program essentially replaced the Section 221(d)(3) program.



Based upon these facts, the *Cole* court concluded that the dislocated residents of Sky Tower were "displaced persons" within the meaning of Section 101(6) of the URA, 42 U.S.C. Sec. 4601(6), and, in consequence, that they were entitled to URA benefits. In order to reach its conclusion, the District of Columbia Circuit construed the URA definition of "displaced person," which, reduced to its essential language, states:

> The term "displaced person" means any person who . . . moves from real property . . . as a result of the acquisition of such real property, . . . or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency . . . .

URA Sec. 101(6), 42 U.S.C. Sec. 4601(6). The *Cole* court held that this statute states two alternative grounds for eligibility, referred to by the court as "the acquisition clause" and "the notice clause." *Cole v. Harris, supra*, Slip Op. at 9.

Concentrating on the "notice clause," the court in *Cole* held that the eviction of tenants from a HUD-acquired project necessitated by HUD's choice to demolish the structures, was the kind of displacement for which Congress intended URA coverage. HUD was the acquiring agency; HUD issued written orders to the tenants to vacate Sky Tower; and the tenants moved as a result of those orders.

The court squarely held that the URA is not limited to federal construction and rehabilitation projects.

> Congress clearly did not intend that tenants displaced by a simple decision to wreck their homes would receive less protection than tenants displaced by a constructive urban renewal project.
>
> In sum, appellees qualify as "displaced persons" within the plain terms of the notice clause.

*Cole v. Harris, supra,* Slip Op. at 10. In sharp contrast, the Seventh Circuit, in the instant case, held that the URA applies only to construction and rehabilitation projects.

The conclusion and rationale of the Seventh Circuit irreconcilably conflicts with the judgment of the District of Columbia Circuit in *Cole v. Harris, supra.*[4] The contrasting results reached by the two courts undercut the essential purpose of the URA—to provide uniform and fair treatment of "persons displaced as a result of Federal and Federally assisted programs."[5] The two decisions leave the anomolous result that tenants residing in the District of Columbia are afforded essential relocation assistance while tenants residing in Indiana, Illinois, and Wisconsin are denied URA protection under identical circumstances. The conflict among the circuits cannot be reconciled and should be resolved by this Court.

### B. This Case Raises A Significant Issue Relating To The Displacement Of Thousands Of People From Housing Owned By The Federal Government

For many years the two most notable federal and federally-assisted programs displacing vast numbers of poor families throughout the country were urban renewal and the federal highway program. Today, a third program threatens staggering displacement, namely, the

4 Indeed, Judge Wilkey, dissenting in *Cole*, argues that *Cole* and *Alexander* are indistinguishable and are in direct conflict, *Cole v. Harris, supra,* (dissenting opinion) at 1, 12, 25-26 and 29.

5 URA Sec. 201, 42 U.S.C. Sec.4621 (1970).



repossession and closing of federally-assisted, multi-family housing projects under HUD's property disposition program. Ironically, the large bulk of this housing is for low- and moderate-income families and was often built particularly for families displaced by other federal programs.[6]

In October, 1977, HUD reported to Congress the magnitude of the problem of repossessed multi-family projects. It was reported that 1,366 formerly subsidized projects housing 154,724 families were in "financial distress"—either owned by HUD, in serious default, or in the process of assignment or foreclosure.[7] The report projects that HUD's inventory of properties in financial distress would reach 3,000 projects housing 342,000 units by 1982. Commenting on this trend, a recent analysis of troubled HUD projects in Boston states:

> Unless this trend is reversed, HUD may eventually have to face a charge that it is directly or indirectly responsible for the effective displacement of thousands of low- and moderate-income families in these areas, with little prospect of standard housing being available to them at a rental they can afford.

HUD Boston Area Office, *Assisted Multi-Family Projects, City of Boston: A Strategy Paper* 12 (Feb. 1977)

6 Section 221(d)(3) of the National Housing Act, 12 U.S.C. Sec. 1715 1(d)(3), the program under which Riverhouse was constructed, was designed in large part to house displaced persons. See, 12 U.S.C. Secs. 1715 *l*(a), 1715 *l*(d)(3)iii, 1715 *l*(f); S.Rep. 1954 U.S Code & Cong. Adm. News, 2747-8.

7 Statement of Assistant Secretary Lawrence B. Simons on "HUD Troubled Projects" before the Senate Banking, Housing and Urban Affairs Committee, October 17, 1977, p. 2. The three stages of distress outlined by Assistant Secretary Simons were (with the number of projects indicated in parenthesis): 1) projects in the HUD-owned acquired property inventory (204); 2) projects in which the mortgage has been assigned to HUD or the project is in the process of foreclosure (950); and 3) projects in serious default, posing potential insurance claims (212).

reported in 4 *Housing & Development Reporter* No. 26 (March 21, 1977) at 950.

Consequently, the question presented by this case is of major importance from a variety of vantage points. First, the issue raised is of critical importance to the 154,724 families whose housing either is currently owned by HUD or which is likely to be acquired by HUD in the near future. Their displacement will be much more than a simple inconvenience, a fact amply demonstrated in the legislative activity which culminated in the URA. Voluminous reports, testimony, and debates repeatedly describe the financial demands and personal disruption caused by displacement, and document the particularly harsh effects upon the poor, the elderly, large families, and non-whites.[8] Congress viewed this personal hardship of unassisted displacement as one of two public policy reasons for passing the bill, the other being the need for uniformity among federal programs in assistance given to displaced persons. These Congressional concerns are stated in the Act's declaration of policy:

> The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

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8 *See, e.g.*, Remarks of Senator Muskie, 115 Cong. Rec. 31533 (1969), 116 Cong. Rec. 20463 (1970); Remarks of Congressman Ashley, 115 Cong. Rec. 36049 (1969); Remarks of Congressman Cohelan, 116 Cong. Rec. 11223 (1970); Remarks of Congressman Bennett, 116 Cong. Rec. 11224 (1970); Remarks of Senator Tydings, 115 Cong. Rec. 36049 (1969); Remarks of Congressman Koch, 115 Cong. Rec. 6101 (1969); S.Rep. No. 488, 91st Congress, 1st Session (1969); H.R.Rep. No. 1656, 91st Congress, 2d Session (1970).



URA Sec. 201, 42 U.S.C. Sec. 4621. They are also given life in the URA's broad definition of "displaced person" and in the generous benefits provided in the Act.

Second, this case is of vital importance to local officials of cities which contain federally-held housing. These officials need to know whether or not HUD will provide relocation benefits and services to persons displaced from HUD-held housing. Should the URA apply to displacees of HUD-held properties, HUD would be required to assure that decent replacement housing be available, and would be required to provide assistance in locating that housing. *See*, 42 U.S.C. Secs. 4625, 4626. If the URA does not apply to the persons displaced by HUD, the burden of insuring decent and affordable housing shifts from the federal government to local government.

Third, a definitive resolution of the applicability of the URA to persons displaced from HUD-acquired projects is of manifest importance to HUD. Should this Court establish the applicability of the URA to Riverhouse situations, the cost of relocation would become a factor to be weighed by HUD in evaluating its various disposition options. *See, Cole v. Harris, supra*, Slip Op. at 16.

Consequently, it is not only the scope of the URA, but also the hardship imposed upon individuals and the responsibilities placed on local, state and federal governments resulting from displacement, which urge consideration of this case by the Court. A definitive ruling by this Court on the applicability of the URA will provide uniformity in the treatment of persons displaced by the

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9 A displaced tenant is entitled to moving expenses of $300.00 (42 U.S.C. Sec. 4622) a dislocation allowance of $200.00 (42 U.S.C. Sec. 4622) and a replacement housing expense of up to $4,000.00 (42 U.S.C. Sec. 4624).

government which is supposed to be the hallmark of the URA. For these reasons, it is essential that the Supreme Court grant this petition for a writ of certiorari.

## CONCLUSION

Because the judgment of the Seventh Circuit Court of Appeals directly conflicts with the decision of the District of Columbia Circuit Court of Appeals, and because review of this case affords the opportunity to determine the appropriate interpretation of the URA, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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ATTORNEYS FOR PETITIONERS

# APPENDIX

## RULINGS BELOW

IN THE DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF INDIANA

INDIANAPOLIS DIVISION

| | | |
|---|---|---|
| JOHN BLADES, *et al.*, | ) | |
| | ) | |
| *Plaintiffs,* | ) | |
| | ) | |
| *vs.* | ) | CIVIL NO. IP 74-706-C |
| | ) | |
| U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *et al.*, | ) | |
| | ) | |
| *Defendants.* | ) | |

## FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

This cause came before the Court on defendants' Motion To Dismiss and In The Alternative Motion For Summary Judgment and on Plaintiffs' Motion for Partial Summary Judgment, and the Court hereby makes the following findings of fact, conclusions of law, and judgment.

## FINDINGS OF FACT

1. Riverhouse Tower Apartments, is a 294 unit apartment complex, located at 1150-1152 White River Parkway, West Drive, Indianapolis, Indiana.

2. The mortgage on Riverhouse Tower Apartments was insured by the Secretary of the Department of Housing and Urban Development in accordance with provisions of 221(d)(3) of the National Housing Act, as amended, 12 USC Sec. 1715 *l*(d)(3).

3. Under the 221(d)(3) program, private industry is encouraged to invest in multifamily projects through the provision of mortgage insurance which protects lenders against the risk of default by the mortgagor. In addition, upon completion of the project, mortgage interest rate is reduced to 3% per annum and is purchased by the Government National Mortgage Association.

4. Riverhouse Tower Apartments encountered financial difficulty and, the loan went into default on July 1, 1970.

5. The note and mortgage were assigned to the Secretary of the Department of Housing and Urban Development by the Goverment National Mortgage Association on December 22, 1970.

6. On May 9, 1973, the United States filed a complaint to foreclose the mortgage on Riverhouse Tower Apartments in the United States District Court for the Southern District of Indiana.

7. From May 11, 1973 through September 24, 1974, the project was in the possession of a court-ordered receiver.

8. The Secretary acquired title to Riverhouse Tower Apartments through a resulting Marshal's sale, and the deed to the Secretary of the Department of Housing and Urban Development was recorded on September 24, 1974.

9. At the time of acquisition, all of the plaintiffs were tenants of Riverhouse Tower Apartments.



10. Subsequent to acquisition, the Department of Housing and Urban Development attempted to keep Riverhouse Apartments occupied, but by the time of November 18, 1974, that Department decided to close the building because of the concern for the safety of the residents.

11. On November 18, 1974, the Department of Housing and Urban Development caused notices to quit by December 31, 1974 to be served on all tenants of Riverhouse Tower Apartments.

12. All tenants vacated Riverhouse Tower Apartments by February, 1975.

13. The Department of Housing and Urban Development did not provide relocation payments to tenants of Riverhouse Tower Apartments.

14. Each of the named plaintiffs paid the Department of Housing and Urban Development or the former owner of Riverhouse Tower Apartments a security deposit in the amount of $100.00 at the time of initial tenancy.

15. As of November 30, 1974, plaintiff Young was current in her rent, and the Department of Housing and Urban Development has returned the amount of her security deposit to plaintiff Young.

16. The defendants have admitted that they did not collect any rents for the month of December, 1974, and therefore,they have agreed to return the security deposits of plaintiffs Danforth, Robinson, Washington, and Whitney.

17. The defendants have also agreed to return to plaintiff Holland the sum of $16.75 to reimburse him for the difference between the amount of his security deposit and the amount of his rental delinquency as of November 30, 1974.

18. The records of the Department of Housing and Urban Development show that the remaining plaintiffs, Alexander, Hood, Jackson, and Pippens, were not current in their rent payments, and that their security deposits were kept to make up the deficiency. The sum of $83.25 of the scurity deposit of plaintiff Holland is also being kept by that Department to make up the deficiency in his rent, after returning the sum of $16.75 as previously described.

19. The plaintiffs argue that they were not obligated to pay all the rent which was due under the terms of their leases, alleging a breach of a warranty of habitability.

## CONCLUSIONS OF LAW

1. Plaintiffs are not entitled to relocation assistance and payments under the Uniform Relocation Act of 1970, 42 USC 4601, *et seq.* and following sections. *Caramico v. Secretary of the Department of Housing and Urban Development*, 509 F.2d 694 (2nd Cir. 1974), *Harris, et al. v. Lynn, St. Louis Housing Authority, et al.*, E.D. Mo., Cause No. 74-124-C, decided February, 1976 (copy attached).

2. The type of federal financial assistance received by Riverhouse Tower Apartments under the National Housing Act is excluded from the definition of "federal financial assistance" set forth in the Uniform Relocation Act, 42 USC 4601(6).

3. The termination of the present use of Riverhouse Tower Apartments is not a "program or project undertaken by a federal agency" to which the provision of the Uniform Relocation Act append.



4. Whether there is a warranty of habitability in plaintiffs' leases is a question to be determined by federal law.

5. Under federal law, there is no implied warranty of habitability in plaintiffs' leases. *United States v. Neustadt*, 366 U.S. 696 (1961), *Davis v. Romney*, 490 F.2d 1360 (3rd Cir. 1974); *Jackson v. Lynn*, 506 F.2d 233 (D.C. Cir. 1973); *Patricia White, et al. v. Romney, et al.*, C.D. Calif., Cause No. 72-2646, decided December 18, 1972 (copy attached).

6. As there is no implied warranty of habitability with respect to property acquired by the Secretary pursuant to the National Housing Act, plaintiffs are not entitled to withhold rent because of an alleged breach of such a warranty, even if plaintiffs presented evidence, which they did not, that the alleged breach was, in fact, the reason for their non-payment of rent.

7. The Secretary of the Department of Housing and Urban Development was entitled to apply the amount of security deposit to the amount of each tenant's rental delinquency.

## JUDGMENT

It is therefore ORDERED, ADJUDGED and DECREED that judgment be and is hereby entered for the defendants.

Dated this 1 day of July, 1976.

/s/ CALE J. HOLDER

*JUDGE, United States District Judge*

Genanett ALEXANDER et al.,
Plaintiffs-Appellants,
v.
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT and Carla A. Hills, Secretary, Defendants-Appellees.
**No. 76-1993.**

United States Court of Appeals,

Seventh Circuit.

Argued April 13, 1977.

Decided May 20, 1977.

Rehearing and Rehearing En Banc Denied Sept. 19, 1977.

Before CUMMINGS and PELL, Circuit Judges, and CAMPBELL, Senior District Judge.*

WILLIAM J. CAMPBELL, Senior District Judge.

This is an appeal from an order of the district court granting defendants' motion for summary judgment. The facts are not in dispute.

The seventeen plaintiffs are former tenants of the Riverhouse Tower Apartments (Riverhouse), a complex consisting of two 12-high story buildings containing 294 apartments units located in Indianapolis,Indiana. The project was constructed by Riverhouse Apartments, Inc., a private nonprofit corporation and former mortgagor of Riverhouse. Repayment of a loan secured by the mortgage was insured by the Secretary of the Department of Housing and Urban Development (HUD) under Sec. 221(d)(3) of the National Housing Act, as amended, 12 U.S.C. Sec. 1715*l*(d)(3). In accordance with that

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* Senior District Judge William J. Campbell of the Northern District of Illinois is sitting by designation.



section, upon the completion of the Riverhouse Project, the interest rate on the loan was reduced to 3%, and the mortgage was purchased by the Government National Mortgage Association.

Riverhouse Apartments, Inc. defaulted on the loan in July, 1970, In December of that year the mortgagee (Government National Mortgage Association) assigned the note and mortgage to HUD. Three years later, in face of the mortgagor's continuing default, HUD initiated a foreclosure action in the Southern Distict of Indiana. From May, 1973 until September,1974 Riverhouse was in possession of a court-appointed receiver. A Marshal's sale ensued, and HUD acquired title to Riverhouse.

After the acquisition,HUD emloyed the Federal Property Management Corporation to manage Riverhouse and to secure needed repairs.However, the condition of Riverhouse had so deteriorated that HUD determined to terminate the project. Affidavits in the record attest to the deplorable condition into which Riverhouse had fallen. The project was infested with roaches and vermin; elevators were often inoperable; security was poor; hot water and heat were inadequate or non-existent; the buildings were often flooded; lighting was poor in the narrow hallways which were often cluttered with garbage; plumbing was deficient, and some tenants had electrical problems.

Recognizing that Riverhouse was plagued by unsafe conditions, nonpayment of rents, and the excessive costs of bringing the project into good condition, HUD caused notices to quit to be served on all tenants. These notices were issued on November 18, 1974, requiring the tenants to vacate Riverhouse by December 31, 1974. By February, 1975 Riverhouse was vacant.

During the time the project was operating, all tenants were required to post a $100.00 security deposit at the time of their initial tenancy. When Riverhouse was terminated, HUD returned the security deposits to all tenants who were current in their rent payments. In the case of five of the plaintiffs, however, HUD applied the amount of their security deposits to the balance of any rent arrears.

In the district court, plaintiffs sought relocation benefits as provided by the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. Sec. 4601 *et seq.* (URA). In support of this contention, plaintiffs asserted that the November 18, 1974 order to vacate Riverhouse made them eligible for benefits afforded to "displaced persons" within the meaning of URA. Further, the five plaintiffs whose security deposits were not returned due to rent arrears sought the return of those monies, alleging that HUD had breached a warranty of habitability which is to be implied in their leases. Owing to this breach, plaintiffs contended, the obligation to pay rent was relieved, and thus HUD wrongfully withheld those security deposits and applied them to the balance of rent arrears. The district court held URA inapplicable to the closing of the Riverhouse Project, and held there is no implied warranty of habitability in plaintiffs' leases. We affirm.

I.

Prior to the enactment of URA, there appear to have been two major legislative provisions for handling most relocation benefits: the Amendments to the Federal Housing Act, 42 U.S.C. Sec. 1465, which provided relocation assistance benefits to persons displaced by urban renewal projects, and the Highway Relocation Assistance Act, Pub.L. 91-605, 84 Stat. 1724, which



provided assistance benefits in connection with Federal Aid highway construction projects. In addition to urban renewal and highway construction projects, other legislative provisions dealt with relocation assistance to owners and tenants of land acquired by federal agencies for governmental purposes.[1] All of these relocation assistance provisions were repealed, 84 Stat. 1903, by the enactment of URA. Recognizing the disparities and inconsistencies existing among federal and federally assisted programs with respect to the amount and scope of benefits and other assistances, Congress sought to provide uniform treatment for those forced to relocate as a result of federal and federally aided public improvements programs. House Report No. 91-1556, 91st Cong. 2d Sess.; 1970 U.S.Code Cong. & Admin.News. pp. 5582-5583. *See also:* 42 U.S.C. Sec. 4621.

Relocation assistance under URA is afforded to "displaced persons". 42 U.S.C. Sec. 4601(6) defines a "displaced person" as:

> "Any person who . . . moves from real property, or moves his personal property from real property, as the result of the acquisition of such real property, . . . or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance;. . . ."

Several cases have discussed the eligibility aspects of URA. Even though persons were displaced by an urban renewal project, URA was held inapplicable to that project because the federal government had not executed

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1 E. g. 43 U.S.C. Secs. 1231 to 1234 (Secretary of the Interior), 42 U.S.C. Sec. 2473 (b)(14) (NASA), 10 U.S.C. Sec. 2680 (Military), 49 U.S.C. Sec. 1606(b) (Urban Mass Transportation), 42 U.S.C. Sec. 3074 (Condemnation for Development Programs), and 42 U.S.C. Sec. 3307(b), (c) (Demonstration Cities and Metropolitan Development).

a contract for a loan or grant—an activity held to be determinative of the federal nature of the project. *Feliciano v. Romney*, 363 F.Supp. 656, 672 (S.D.N.Y. 1973). *But see: LaRaza Unida v. Volpe*, 337 F.Supp. 221 (N.D.Cal. 1971), *aff'd.*, 488 F.2d 559 (9th Cir. 1973). Further, a person displaced by a project undertaken by a private institution receiving federal financial assistance for that project was found ineligible to receive relocation benefits. *Parlane Sportswear Company, Inc. v. Weinberger*, 381 F.Supp. 410 (D.Mass.1974), *aff'd.*, 513 F.2d 835 (1st Cir. 1975), *cert. denied*, 423 U.S. 925, 96 S.Ct. 269, 46 L.Ed.2d 252. *See also Jones v. HUD*, 390 F.Supp. 579 (E.D.La.1974).

Eligibility for URA benefits is also based on the requirement that a person be displaced "for a program or project undertaken by a Federal agency, or with Federal financial assistance." 42 U.S.C. Sec. 4601(6). This requirement has been interpreted to mean construction of new federal projects. *Jones v. HUD, supra*, 390 F.Supp. at 583.[2] In a case closely resembling the present, the Second Circuit intimated that Congress intended the program or project requirement of 42 U.S.C. Sec. 4601(6) to mean "construction" programs or projects. *Caramico v. HUD*, 509 F.2d 694, 698 (2d Cir. 1974).

In *Caramico*, a mortgagee of low income dwellings was required by FHA regulations to deliver possession of the mortgage property unoccupied in order to recover federal mortgage insurance. Upon default of the mortgagor and subsequent foreclosure, the mortgagee sought to evict the tenants in order to comply with the vacant delivery

2. The *Jones* opinion refers to an earlier unpublished opinion of the same district court. The reported decision lacks any analysis of the requirement that the claimant of URA benefits be displaced for a program or project undertaken by a Federal agency or with Federal financial assistance.



requirement. The Court found that the evicted tenants were not displaced within the meaning of 42 U.S.C. Sec. 4601(6) since, although there may have been an acquisition within the meaning of that section, the tenants did not show that the acquisition was for a program or project. *Id.*, at 697. Finding a crucial difference between mortgage insurance acquisitions and acquisitions under programs covered by URA, the Second Circuit characterized the former as "random and involuntary while normal urban renewal contemplates a conscious government decision to dislocate some so that an entire area may benefit." *Id.* at 698.

The tenants in this case contend that *Caramico* is distinguishable factually since in *Caramico* HUD was not the mortgagee, did not foreclose on the mortgage, and did not purchase the property from which the tenants were evicted. Further, plaintiffs argue *Caramico* involved the acquisition aspect of 42 U.S.C. Sec. 4601(6), whereas here plaintiffs rely on the aspect of that section dealing with the written order to vacate by the acquiring agency. Finally, plaintiffs seek to distinguish *Caramico* by arguing that the mortgagee in that case was FHA, and since under 12 U.S.C. Sec. 1717(b), the FHA had to convey to HUD, the conveyance was involuntary. But in this case, HUD was not compelled to purchase Riverhouse, nor was HUD required to issue the order to vacate.

Although distinguishable with respect to particular facts, *Caramico* involved the same inquiry as presented by this case, i. e., whether the activity of the governmental agency was "for a program or project undertaken by a Federal agency, or with Federal financial assistance." In this case, we conclude HUD's written order to the tenants of Riverhouse to vacate by December 31, 1974 was not for such a program or project.

The terms "program" and "project" are not defined in URA, nor does the legislative history illuminate Congress' intent with respect to those terms. Without any express indication from Congress as to what it meant by the use of these terms, we look to the objectives sought to be accomplished through the enactment of URA. 42 U.S.C. Sec. 4621 states:

> "The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and Federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole."

As this declaration of policy indicates, programs and projects are those activities designed for the benefit of the public as a whole. Thus, persons displaced by such programs are persons displaced by governmental activities involving the acquisition of land to accomplish an objective benefiting the public or fulfilling a public need. In this regard, an order by HUD to vacate a public housing project because that project had become an irretrievable failure cannot be considered such a program or project. HUD's decision to abandon the Riverhouse Project and its order to the tenants to vacate the facility cannot be characterized as a program or project undertaken by a federal agency to accomplish an objective benefiting the public as a whole. Rather, at best, HUD's decision and order to vacate represent a sad recognition that the Riverhouse Project failed to accomplish the government's objective of providing adequate public housing for the needy.

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3 In intimating that these terms were intended by Congress to mean "construction" programs and projects, the Second Circuit relied on various provisions of URA alluding to that type of activity. *See: Caramico, supra,* 509 F.2d at 698.



Plaintiffs point out that the purpose behind HUD's decision to order the tenants to vacate Riverhouse is undisclosed from the record, and that the Secretary has several options: rehabilitation, demolition, or sale of the facility. Plaintiffs argue that these undisclosed plans constitute a program or project within the meaning of URA. Riverhouse is a conceded failure as a project to provide public housing. We fail to see how a decision to terminate a project can itself become a project in the absence of some indication that the decision to terminate and the order to vacate constitute a prelude to some governmental undertaking amounting to a program designed for the benefit of the public as a whole.

II.

Five plaintiffs in this action claim that their obligation to pay rent was relieved by HUD's breach of a warranty of habitability which, plaintiffs contend, is to be implied in their leases. Thus, plaintiffs argue, their security deposits were wrongfully withheld by HUD, which applied those funds to rent arrears.

Plaintiffs have drawn our attention to a substantial number of reported decisions from various state jurisdictions which have revolutionized the law of landlord-tenant relationships by adopting a theory that in every residential lease, absent a valid contrary agreement, there is an implied warranty of habitability.[4] The courts adopting this theory have tended to treat leases of residential property as both a conveyance of an interest in real property and as an agreement giving rise to a

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4 E. g. *Pines v. Perssion,* 14 Wis.2d 590, 111 N.W.2d 409 (1961); *Jack Springs, Inc. v. Little,* 50 Ill.2d 351, 280 N.E.2d 208 (1972); *Old Town Development Company v. Langford,* 349 N.E.2d 744 (Ind.App. 1976); *Javins v. First National Realty Corp.,* 138 U.S.App.D.C. 369, 428 F.2d 1071 (1970), *cert. denied,* 400 U.S. 925, 91 S.Ct. 186, 27 L.Ed.2d 185 (1970).

contractual relationship in which the landlord's and tenant's obligations are mutually dependent. Most of the adopting jurisdictions analyzed the basic rationale underlying the old common law rule absolving the lessor from all obligation to repair the leased premises in favor of the lessee assuming such an obligation during the term of the lease, and concluded that such a rule was never really intended to apply to urban residential leaseholds. *See: Javins v. First National Realty Corp.*, 138 U.S.App. D.C. 369, 428 F.2d 1071, 1080 (1970) *cert. denied*, 400 U.S. 925, 91 S.Ct. 186, 27 L.Ed.2d 185 (1970). Recognizing that the rule of decision governing this case must be federal, plaintiffs suggest that we look to these state court decisions for guidance in developing a federal landlord-tenant law imposing a warranty of habitability in leases between federally owned low income housing projects and their tenants. *Cf. Illinois v. Milwaukee*, 406 U.S. 91, 107, 92 S.Ct. 1385, 31 L.Ed.2d 712 (1972).[5]

We decline plaintiffs' invitation to follow these state court decisions implying a warranty of habitability in urban residential leases in the private sector. We decline to do so because we are not persuaded that such warranties should be implied in leases of dwelling units constructed and operated as public housing projects. In contrast to housing projects in the private sector, the construction and operation of public housing are projects established to effectuate a stated national policy "to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income". 42 U.S.C. Sec. 1401.

5 *Illinois v. Milwaukee, supra*, involved a federal common law of nuisance in a water pollution context. The Court indicated that a state's environmental quality standards are relevant but not conclusive sources of federal common law. *Cf. also: Textile Workers v. Lincoln Mills*, 353 U.S. 448, 456-457, 77 S.Ct. 912, 1 L.Ed.2d 972 (1957).



As such, the implication of a warranty of habitability in leases pertaining to public housing units is a warranty that the stated objectives of national policy have been and are being met. We feel that the establishment of any such warranty that national policy goals have been attained or that those goals are being maintained is best left to that branch of government which established the objectives.

Plaintiffs further contend that the rationale of the various state court decisions implying the warranty in urban residential leases was advanced years ago by Congress when it enacted the United States Housing Act of 1937, 42 U.S.C. Sec. 1401 *et seq.* Pointing to the Congressional declaration of national housing policy contained in 42 U.S.C. Sec. 1441, the "comprehensive" regulatory scheme imposed on mortgagors of Section 221(d)(3) projects[6] and the various chapters of HUD's Property Disposition Handbook, Multifamily Properties, RHM 4315. 1(February 17, 1971), plaintiffs argue that these multiple obligations upon HUD, its mortgagors, and management agents to make repairs and generally maintain public housing facilities in decent, safe, and sanitary conditions must implicitly run to the benefit of the tenant as an implied term in their leases. We reject this contention for reasons similar to our rejection of plaintiffs' suggestion that we follow state court decisions in implying a warranty of habitability.

The stated Congressional purpose of providing a "decent home and a suitable living environment for

6. Plaintiffs cite as examples of this "comprehensive" scheme 24 C.F.R. Secs. 221.530(b), 221.545(c), and 221.529. We note that these sections pertain to the mortgagor's general duty to maintain facilities constructed under Sec. 221(d)(3) programs in the context of a much more comprehensive financial scheme relating to federally insured mortgages.

every American family," 42 U.S.C. Sec. 1441, expresses general Congressional objectives in instituting public housing programs. We fail to see how these objectives can be interpreted to impose upon HUD or its agent an absolute, fixed obligation to maintain suitable dwellings. Moreover, like many declarations of Congressional policy, 42 U.S.C. Sec. 1441 sets forth broad future objectives on a grand scale which are to be accomplished over a period of many years. The establishment of Congressional objectives, while certainly affording benefits to those eligible to partake of programs designed to attain those objectives, is not tantamount to a warranty that such objectives will be attained.

Accordingly, the judgment of the district court is affirmed.

AFFIRMED.

# United States Court of Appeals

**For the Seventh Circuit**

**Chicago, Illinois 60604**

September 19, 1977.

Before

Hon. Thomas E. Fairchild, Chief Judge*
Luther M. Swygert, Circuit Judge
Hon. Walter J. Cummings, Circuit Judge
Wilbur F. Pell, Jr., Circuit Judge
Hon. Robert A. Sprecher, Circuit Judge
Philip W. Tone, Circuit Judge
William J. Bauer, Circuit Judge
Harlington Wood, Jr., Circuit Judge
William J. Campbell, Sr., District Judge**

| | | |
|---|---|---|
| GENANETT ALEXANDER, *et al.*, *Plaintiffs-Appellants,* | ) | Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division. |
| No. 76-1993 | ) | |
| *vs.* | ) | |
| UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT and CARLA ANDERSON HILLS, Secretary of the Department of Housing and Urban Development, *Defendants-Appellees.* | ) | No. IP 74-706-C Cale J. Holder, Judge |

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* Chief Judge Thomas E. Fairchild voted to grant a rehearing *in banc*.

** Senior District Judge William J. Campbell of the Northern District of Illinois is sitting by designation.

On consideration of the petition for rehearing and suggestion for rehearing *in banc* filed in the above-entitled cause by counsel for the plaintiffs-appellants, a vote of the active members of the Court was requested, and a majority of the active members of the Court have voted to deny a rehearing *in banc*. All of the judges on the original panel have voted to deny the petition for rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.



## STATUTORY PROVISIONS INVOLVED

### Section 4601. Definitions

As used in this chapter—

(1) The term "Federal agency" means any department, agency, or instrumentality in the executive branch of the Government (except the National Capital Housing Authority), any wholly owned Government corporation (except the District of Columbia Redevelopment Land Agency), and the Architect of the Capitol, the Federal Reserve banks and branches thereof.

(4) The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any annual payment or capital loan to the District of Columbia.

(5) The term "person" means any individual, partnership, corporation, or association.

(6) The term "displaced person" means any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; and solely for the purposes of sections 4622(a) and (b) and 4625 of this title, as a result of the acquisition of or as the result of the written order of the acquiring agency to vacate other real property, on which such person conducts a business or farm operation, for such program or project.

**Section 4621. Declaration of policy**

The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

**Section 4622. Moving and related expenses—General provision**

(a) Whenever the aquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after January 2, 1971, the head of such agency shall make a payment to any displaced person, upon proper application as approved by such agency head, for—

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency; and

(3) actual reasonable expenses in searching for a replacement business or farm.

(b) Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive a moving expense allowance, determined according to a schedule



established by the head of the Federal agency, not to exceed $300; and a dislocation allowance of $200.

**Section 4624. Replacement housing for tenants and certain others**

In addition to amounts otherwise authorized by this subchapter, the head of the Federal agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 4623 of this title which dwelling was actually and lawfully occupied by such displaced person for not less than ninety days prior to the initiation of negotiations for acquisition of such dwelling. Such payment shall be either—

(1) the amount necessary to enable such displaced person to lease or rent for a period not to exceed four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed $4,000, or

(2) the amount necessary to enable such person to make a downpayment (including incidental expenses described in section 4623(a)(1)(C) of this title) on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed $4,000, except that if such amount exceeds $2,000, such person must equally match any such amount in excess of $2,000, in making the downpayment.

**Section 4625. Relocation assistance advisory services—Program for displaced persons and economically injured occupants of adjacent property.**

(a) Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after January 2, 1971, the head of such agency shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection (c) of this section. If such agency head determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, he may offer such person relocation advisory services under such program.

(b) Federal agencies administering programs which may be of assistance to displaced persons covered by this chapter shall cooperate to the maximum extent feasible with the Federal or State agency causing the displacement to assure that such displaced persons receive the maximum assistance available to them.

(c) Each relocation assistance advisory program required by subsection (a) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to—

(1) determine the need, if any, of displaced persons, for relocation assistance;

(2) provide current and continuing information on the availability, prices, and rentals, of comparable decent, safe, and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;



(3) assure that, within a reasonable period of time, prior to displacement there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, as defined by such Federal agency head, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment, except that the head of that Federal agency may prescribe by regulation situations when such assurances may be waived;

(5) supply information concerning Federal and State housing programs, disaster loan programs, and other Federal or State programs offering assistance to displaced persons; and

(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

(d) the heads of Federal agencies shall coordinate relocation activities with project work, and other planned or proposed governmental actions in the community or nearby areas which may affect the carrying out of relocation assistance programs.

**Section 4626. Housing replacement by Federal agency as last resort**

(a) If a Federal project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and the head of the Federal agency determines that such housing cannot otherwise be made available he may take such action as is necessary or appropriate to provide such housing by use of funds authorized for such project.

(b) No person shall be required to move from his dwelling on or after January 2, 1971, on account of any Federal project, unless the Federal agency head is satisfied that replacement housing, in accordance with section 4625(c)(3) of this title, is available to such person.

APPENDIX

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-874

GENANETT ALEXANDER, *et al.*,
*Petitioners*

*vs.*

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOMENT, *et al.*,
*Respondents*

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

PETITION FOR WRIT OF CERTIORARI FILED DECEMBER 16, 1977
CERTIORARI GRANTED JUNE 19, 1978

IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1977

**No. 77-874**

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GENANETT ALEXANDER, *et al.*,

*Petitioners*

*-vs.-*

UNITED STATES DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT, *et al.*,

*Respondents*

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

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* The judgment of the United States District Court is printed in the Petition for a Writ of Certiorari at pp. A1-A5. The opinion of the United States Court of Appeals for the Seventh Circuit is printed in the Petition for a Writ of Certiorari at pp. A6-A16. The order denying appellants' Petition for Rehearing *En Banc* is printed in the Petition for a Writ of Certiorari at pp. A17-A18.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF INDIANA

INDIANAPOLIS DIVISION

| Date | Docket Entries |
|---|---|
| 12/23/74 | Complaint filed. Summons issued. Notice to Clerk filed. Request for temporary restraining order stated within the complaint. Affidavits in support of motion for temporary restraining order filed. |
| | * * * |
| 5/5/75 | Defendants file motion to dismiss with memorandum in support thereof, c/s. |
| | * * * |
| 5/22/75 | Consolidated Motion for Leave to Add Parties Plaintiff and for Enlargement of Time Within Which to Respond to Defendant's Motion to Dismiss filed. C/S. |
| 5/22/75 | Court grants plaintiff's motion to add party plaintiffs and the amended complaint is filed. |
| | * * * |
| 6/19/75 | Plaintiffs file the following:<br>(1) answer in opposition to defendants' motion to dismiss, c/s.<br>(2) memorandum in support of answer in opposition to defendants' motion to dismiss, c/s. |
| 6/17/75 | Court grants plaintiff's motion for extension of time to file reply brief to motion to dismiss; time is extended to and including June 19, 1975. |
| | * * * |

| Date | Docket Entries |
|---|---|
| 6/27/75 | Court rules defendant's motion to dismiss filed 5/5/75 as MOOT since amended complaint has been filed. |
| 7/9/75 | Plaintiffs file motion for leave to amend amended complaint by interlineation, c/s. |
| 9/19/75 | Request for Admissions filed. C/S. |
| 9/22/75 | Plaintiffs file request for production of documents, c/s. |
| 9/30/75 | Parties file stipulation regarding depositions. |
| | * * * |
| 10/17/75 | Defendants file motion to dismiss or in the alternative motion summary judgment with memorandum in support thereof, c/s. |
| 1/30/76 | Defendants file the following:<br>(1) response to request for production of documents, c/s.<br>(2) responses to requests for admission, c/s. |
| | * * * |
| 2/4/76 | Court ORDERS plaintiff to file all evidence in opposition to mot for summary judgment with brief by February 20, 1976. Defendant ORDERED to file reply by February 26, 1976. |
| 2/24/76 | Plaintiffs file the following:<br>(1) motion for partial summary judgment, c/s.<br>(2) memorandum in support of motion for partial summary judgment and in opposition to defendants' motion to dismiss or for summary judgment, c/s. |
| | * * * |



| Date | Docket Entries |
|---|---|
| 3/29/76 | Defendants file memorandum in opposition to plaintiffs' motion for partial summary judgment and in reply to plaintiffs' memorandum in opposition to defendants' motion to dismiss or for summary judgment, c/s. |
| 4/21/76 | Deposition of Ms. Rae Ginger filed. |
| 4/27/76 | Court GRANTS governments motion for summary judgment and the D.A. is ordered to prepare findings and judgment entry. Court DENIES plaintiffs motion for partial summary judgment and D.A. ordered to prepare entry. |
| 4/29/76 | Plaintiffs' Reply Memorandum filed. C/S. |
| | * * * |
| 7/1/76 | Court enters findings of fact, conclusion of law and judgment entry. Court finds for the defendants. CASE CLOSED. |
| 8/27/76 | Notice of Appeal filed. |
| 8/27/76 | Request for Clerk to Certify and Transmit Partial Record filed. C/S. |
| 8/27/76 | Issues Presented on Appeal filed. C/S. |
| 8/27/76 | $5.00 filing fee paid. $250 Cash Cost Bond filed. |
| 8/30/76 | Copy of Notice of Appeal mailed to Counsel. |
| 8/30/76 | Notice of Appeal and Docket entries mailed to Clerk, U.S. Court of Appeals. |
| 10/7/76 | Record on appeal consisting of 1 vol. pleadings transmitted to Court of Appeals. |
| 10/5/77 | Record on appeal consisting of 1 vol. of pleadings received this date from court of appeals. Certified copy of order and opinion affirming district court filed. |

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
NO. 76-1993

| Date | Docket Entries |
|---|---|
| 11/19/76 | Appellants File Brief |
| | * * * |
| 1/10/77 | Appellees File Brief |
| 1/25/77 | Appellants File Reply Brief |
| | * * * |
| 4/13/77 | Oral Argument in Court of Appeals |
| 5/20/77 | Decision and Opinion of Court of Appeals filed, affirming judgment of District Court. |
| 6/6/77 | Appellants file Petition for Rehearing *En Banc* |
| 6/10/77 | National Association for the Advancement of Colored People, National Conference of Hispanic-American Citizens, National Conference of Catholic Charities, Chicago Council of Lawyers, South Merrill Tenant Council, and Ruth Brown file Motion for Leave to Appear and file brief as *Amici Curiae*, with supporting affidavit and documents. |
| 6/13/77 | Court of Appeals grants Motion for Leave to Appear and File Brief as *Amici Curiae*. |
| | * * * |
| 6/27/77 | *Amici Curiae* file Brief in Support of Appellants' Petition for Rehearing *En Banc*. |
| | * * * |
| 7/18/77 | Appellees file Brief in Opposition to Appellants' Petition for Rehearing *En Banc*. |



| Date | Docket Entries |
|---|---|
| 9/19/77 | Court of Appeals denies Appellants' Petition for Reharing *En Banc*. |
| 9/27/77 | Record returned to United States District Court. |

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

**AFFIDAVIT OF PLAINTIFF IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER**

Rita Blades, having first been duly sworn upon her oath, states as follows:

1. That I reside at Riverhouse Apartments, Indianapolis, Marion County, Indiana, which is owned by the defendant United States Department of Housing and Urban Development (HUD).

2. That all rent due defendant for my occupancy of said premises, through November 30, 1974, has been paid to defendant.

3. That I tendered to an agent of said defendant the full amount of rent due for the month of December, 1974, in a timely fashion, but that said agent refused said tender.

4. That I have received a copy of the November 18, 1974, form letter from Federal American Properties, the management agent of defendant HUD a true and accurate copy of which is attached hereto and identified as "Appendix A"; that in addition I have otherwise been informed by defendant HUD and its agents that defendants will insist upon my vacating the premises on or before December 31, 1974.

5. That I have searched for, and been unable to locate, suitable alternative living quarters which are safe, decent, and sanitary, at a comparable monthly rental rate.

6. That defendants have offered to me no relocation assistance or benefits.



7. That at no time have defendants offered me any type of hearing prior to the termination of my tenancy.

8. That if I am required to move from Riverhouse Apartments in the near future, I will incur great suffering and irreparable harm, due to my present inability to procure suitable alternative living quarters, and defendants' failure to provide any relocation assistance and benefits.

/s/ RITA BLADES
RITA BLADES

(Jurat Omitted in Printing)

FEDERAL

American
Properties,
Inc.

TELEPHONE (317) 923-7251

REPLY TO: *1319 Wendy Lane*
*Indianapolis, Ind. 46218*

*November 18, 1974*

*Dear Resident:*

*We regret to inform you that we have been advised by the Department of Housing and Urban Development, that due to the unsafe conditions of the buildings, it has become necessary to close Riverhouse Towers Apartments.*

*All residents must vacate the premises by December 31, 1974. We are sorry for any inconveniences; if we can be of any assistance to you in relocting, please feel free to call our office, telephone 635-3371.*

*Thank you in advance for your cooperation.*

*Sincerely,*
*FEDERAL PROPERTY MANAGEMENT CORPORATION*

/s/ LINDA McCOY
*Linda McCoy,*
*Area Supervisor*

*LMcC/bjo*



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

**AFFIDAVIT OF PLAINTIFF IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER**

Annie Danforth, having first been duly sworn upon her oath, states as follows:

1. That I reside at Riverhouse Apartments, Indianapolis, Marion County, Indiana, which is owned by the defendant United States Department of Housing and Urban Development (HUD).

2. That all rent due defendant for my occupancy of said premises, through November 30, 1974, has been paid to defendant.

3. That I tendered to an agent of said defendant the full amount of rent due for the month of December, 1974, in a timely fashion, but that said agent refused said tender.

4. That I have received a copy of the November 18, 1974 form letter from Federal American Properties, the management agent of defendant HUD, a true and accurate copy of which is attached hereto and identified as "Appendix A"; that in addition I have otherwised been informed by defendant HUD and its agents that defendants will insist upon my vacating the premises on or before December 31, 1974.

5. That I have searched for, and been unable to locate, suitable alternative living quarters which are safe, decent, and sanitary, at a comparable monthly rental rate.

6. That defendants have offered to me no relocation assistance or benefits.

7. That at no time have defendants offered me any type of hearing prior to the termination of my tenancy.

8. That if I am required to move from Riverhouse Apartments in the near future, I will incur great suffering and irreparable harm, due to my present inability to procure suitable alternative living quarters, and defendants' failure to provide any relocation assistance and benefits.

/s/ ANNIE DANFORTH
Annie Danforth

(Jurat Omitted in Printing)



**FEDERAL**

**American Properties, Inc.**

**TELEPHONE (*317*) 923-7251**

**REPLY TO:** ***1319 Wendy Lane***
***Indianapolis, Ind. 46218***

*November 18, 1974*

*Dear Resident:*

*We regret to inform you that we have been advised by the Department of Housing and Urban Development, that due to the unsafe conditions of the buildings, it has become necessary to close Riverhouse Towers Apartments.*

*All residents must vacate the premises by December 31, 1974.*

*We are sorry for any inconveniences; if we can be of any assistance to you in relocating, please feel free to call our office, telephone 635-3371.*

*Thank you in advance for your cooperation.*

*Sincerely,*

*FEDERAL PROPERTY MANAGEMENT CORPORATION*

/s/ LINDA McCOY
*Linda McCoy,*
*Area Supervisor*

*LMcC/bjo*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

**AFFIDAVIT OF PLAINTIFF IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER**

Faye Whitney, having first been duly sworn upon her oath, states as follows:

1. That I reside at Riverhouse Apartments, Indianapolis, Marion County, Indiana, which is owned by the defendant United States Department of Housing and Urban Development (HUD).

2. That all rent due defendant for my occupancy of said premises, through November 30, 1974, has been paid to defendant.

3. That I tendered to an agent of said defendant the full amount of rent due for the month of December, 1974, in a timely fashion, but that said agent refused said tender.

4. That I have received a copy of the November 18, 1974, form letter from Federal American Properties, the management agent of defendant HUD, a true and accurate copy of which is attached hereto and identified as "Appendix A"; that in addition I have otherwise been informed by defendant HUD and its agents that defendants will insist upon my vacating the premises on or before December 31, 1974.

5. That I have searched for, and been unable to locate, suitable alternative living quarters which are safe, decent, and sanitary, at a comparable monthly rental rate.

6. That defendants have offered me no relocation assistance or benefits.



7. That at no time have defendants offered me any type of hearing prior to the termination of my tenancy.

8. That if I am required to move from Riverhouse Apartments in the near future, I will incur great suffering and irreparable harm, due to my present inability to procure suitable alternative living quarters, and defendant's failure to provide any relocation assistance and benefits.

/s/ FAYE WHITNEY
Faye Whitney

(Jurat Omitted in Printing)

FEDERAL

American
Properties,
Inc.

TELEPHONE (*317*) *923-7251*

REPLY TO: *1319 Wendy Lane*
*Indianapolis, Ind. 46218*

*November 18, 1974*

*Dear Resident:*

*We regret to inform you that we have been advised by the Department of Housing and Urban Development, that due to the unsafe conditions of the buildings, it has become necessary to close Riverhouse Towers Apartments.*

*All residents must vacate the premises by December 31, 1974.*

*We are sorry for any inconveniences; if we can be of any assistance to you in relocating, please feel free to call our office telephone 635-3371.*

*Thank you in advance for your cooperation.*

*Sincerely,*

*FEDERAL PROPERTY MANAGEMENT CORPORATION*

/s/ LINDA McCOY

*Linda McCoy,*
*Area Supervisor*

*LMcC/bjo*



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

**REQUEST FOR ADMISSIONS**

Plaintiffs request Defendants United States Department of Housing and Urban Development and Carla A. Hills, within thirty (30) days after service of this request, to admit for the purpose of this action only, the truth of the following facts:

1. Plaintiff Genanett Alexander formerly resided with her four children at Riverhouse Apartments, No. 10120S.

2. Plaintiff Alexander assumed occupancy of her apartment August 5, 1974, pursuant to a lease with Riverhouse Apartments, Inc., and vacated said apartment on February 10, 1975.

3. Plaintiffs John and Rita Blades are husband and wife and formerly resided with their three children at Riverhouse Apartments, No. 106-S, 1150-1152 White River Parkway, Indianapolis, Indiana.

4. Plaintiffs John and Rita Blades assumed occupancy of their apartment on May 10, 1974, pursuant to a lease with Riverhouse Apartments, Inc., and vacated said apartment in January, 1975.

5. Plaintiff Loretta Carson formerly resided at Riverhouse Apartments, No. 403-N, 1150-1152 White River Parkway, Indianapolis, Indiana.

6. Plaintiff Carson assumed occupancy of her apartment in June, 1974, pursuant to a lease with Riverhouse Apartments, Inc., and she vacated said apartment in January, 1975.

7. Plaintiff Annie Danforth formerly resided at Riverhouse Apartments, No. 601-N, 1150-1152 White River Parkway, Indianapolis, Indiana.

8. Plaintiff Danforth assumed occupancy of her apartment on August 20, 1974, pursuant to a lease with defendant HUD, and she vacated said apartment in January, 1975.

9. Plaintiff Clarence Holland formerly resided in Riverhouse Apartments, No. 311-N, 1150-1152 White River Parkway, Indianapolis, Indiana.

10. Plaintiff Holland assumed occupancy of his apartment in July, 1969, pursuant to a lease with Riverhouse Apartments, Inc., and he vacated said apartment in January, 1975.

11. Plaintiff Doris Hood formerly resided in Riverhouse Apartments, No. 1003-N, 1150-1152 White River Parkway, Indianapolis, Indiana.

12. Plaintiff Hood assumed occupancy of her apartment in June, 1969, pursuant to a lease with Riverhouse Apartments, Inc., and she vacated said apartment in January, 1975.

13. Plaintiff Martha Parson formerly resided at Riverhouse Apartments, No. 709-N.

14. Plaintiff Parson assumed occupancy of her apartment in September, 1972, pursuant to a lease with Riverhouse Apartments, Inc., and she vacated said apartment on November 25, 1974.

15. Plaintiff Jo Ann Jackson formerly resided in Riverhouse Apartments, No. 301-S, 1150-1152 White River Parkway, Indianapolis, Indiana.



16. Plaintiff Jackson assumed occupancy of her apartment in April, 1974, pursuant to a lease with Riverhouse Apartments, Inc., and she vacated said apartment in December, 1974.

17. Plaintiff Elton Kennedy formerly resided at Riverhouse Apartments, No. 906-N, 1150-1152 White River Parkway, Indianapolis, Indiana.

18. Plaintiff Kennedy assumed occupancy of his apartment in October, 1974, pursuant to a lease with defendant HUD, and he vacated his apartment in February, 1975.

19. Plaintiff Martha Parson and her two children formerly resided at Riverhouse Apartments, No. 810-N.

20. Plaintiff Parson assumed occupancy of her apartment on August 12, 1974, pursuant to a lease with defendant HUD, and she vacated her apartment on December 28, 1974.

21. Plaintiff Mary Patterson formerly resided in Riverhouse Apartments, No. 812-S, 1150-1152 White River Parkway, Indianapolis, Indiana.

22. Plaintiff Patterson assumed occupancy of her apartment in July, 1974, and she vacated her apartment on or about February 3, 1975.

23. Plaintiff Willa Peterson formerly resided in Riverhouse Apartments, No. 210-S, 1150-1152 White River Parkway, Indianapolis, Indiana.

24. Plaintiff Peterson assumed occupancy of her apartment on or about October 14, 1974, pursuant to a lease with defendant HUD, and she vacated her apartment on or about February 3, 1975.

25. Plaintiffs Michael Pippens and his wife formerly resided in Riverhouse Apartments, No. 411-S, 1150-1152 White River Parkway, Indianapolis, Indiana.

26. Plaintiff Pippens and his wife assumed occupancy of their apartment in February, 1973, pursuant to a lease with Riverhouse Apartments, Inc., and they vacated said apartment in January, 1975.

27. Plaintiff Irma Riggins formerly resided in Riverhouse Apartments, No. 912-N, 1150-1152 White River Parkway, Indianapolis, Indiana.

28. Plaintiff Riggins assumed occupancy of her apartment on or about November 9, 1973, pursuant to a lease with Riverhouse Apartments, Inc., and she vacated said apartment in December, 1974.

29. Plaintiff Clara Robinson formerly resided at Riverhouse Apartments, No. 1109-N, 1150-1152 White River Parkway, Indianapolis, Indiana.

30. Plaintiff Robinson assumed occupancy of her apartment on June 22, 1974, pursuant to a lease with Riverhouse Apartments, Inc., and she vacated her apartment on December 2, 1974.

31. Plaintiff Gloria Safford and her six children formerly resided in Riverhouse Apartments, No. 301-N, 1150-1152 White River Parkway, Indianapolis, Indiana.

32. Plaintiff Safford assumed occupancy of her apartment on July 1, 1974, pursuant to a lease entered into with Riverhouse Apartments, Inc., and she vacated said premises on January 28, 1975.

33. Plaintiff Lonnie Washington formerly resided in Riverhouse Apartments, No. 306-S, 1150-1152 White River Parkway, Indianapolis, Indiana.



34. Plaintiff Washington assumed occupancy of his apartment on January 11, 1974, pursuant to a lease entered into with Riverhouse Apartments, Inc., and he vacated his apartment on December 13, 1974.

35. Plaintiff Faye Whitney formerly resided with her four children at Riverhouse Apartments, No. 1012-N, 1150-1152 White River Parkway, Indianapolis, Indiana.

36. Plaintiff Whitney assumed occupancy of her apartment on September 10, 1970, pursuant to a lease with Riverhouse Apartments, Inc., and she vacated her apartment in January, 1975.

37. Plaintiff Marcella Young formerly resided in Riverhouse Apartments, No. 207-N, 1150-1152 White River Parkway, Indianapolis, Indiana.

38. Plaintiff Young assumed occupancy of her apartment in July, 1974, pursuant to a lease entered into with Riverhouse Apartments, Inc., and she vacated her apartment on December 13, 1974.

39. Defendant HUD is an Executive Department of the United States Government.

40. Defendant Carla Anderson Hills is the Secretary of HUD.

41. The Riverhouse Apartments are located at 1150-1152 White River Parkway, West Drive.

42. Riverhouse Apartments consist of two twelve-story buildings containing a total of 294 individual apartments.

43. Riverhouse Apartments were built by Riverhouse Apartments, Inc., a corporation organized under the Indiana Not-For-Profit Corporation Act in 1967.

44. The mortgage on Riverhouse Apartments was insured and subsidized by the defendant HUD under

Section 221(d)(3), 12 U.S.C. §(l)(d)(3), of the National Housing Act, which was in part designed to assist low to moderate-income tenants in obtaining decent housing and a suitable living environment.

45. On December 17, 1970, the mortgage on Riverhouse Apartments was assigned to HUD.

46. Riverhouse Apartment, Inc., fell into default on said mortgage, and on May 9, 1973, defendant HUD initiated proceedings for foreclosure in the United States District Court, Southern District of Indiana, Indianapolis Division, Civil Action No. IP 73-C-233.

47. On June 6, 1974, a decree in foreclosure was entered, ordering that Riverhouse Apartments be sold by the United States Marshal for the Southern District of Indiana, with the proceeds to be applied to costs and the balance due.

48. On August 13, 1974, Riverhouse Apartments was sold pursuant to the aforesaid decree and was purchased by defendant HUD.

49. After HUD purchased Riverhouse Apartments, it accepted rental payments from plaintiffs and other tenants, entered into leases with certain of the plaintiffs and other persons, and otherwise managed the aforesaid apartments.

50. Defendant HUD purchased Riverhouse Apartments for the purpose of rehabilitation and/or resale.

50a. The purchase of Riverhouse Apartments by HUD constitutes a federal "program or project" within the meaning of 42 U.S.C. §4622.

51. On our about September 1, 1974, defendant HUD entered into an agreement with Federal American



Properties, Inc. to manage Riverhouse Apartments and to secure the performance of needed repairs thereto, for and on behalf of defendant HUD.

52. At all times relevant hereto there has been in effect in Marion County, Indianapolis, Indiana, General Ordinance Number One-1968, as amended (April 19, 1968), an ordinance establishing minimum health and safety standards for housing.

53. At all times during 1974 and throughout plaintiffs' tenancy at Riverhouse Apartments, there existed numerous violations of General Ordinance Number One-1968, as amended (April, 1968) in and about said apartments and plaintiffs' dwelling units, rendering the same virtually uninhabitable, and constituting a health hazard.

54. At all times during 1974 the hallways, stairways, and exits of Riverhouse Apartments were unlighted.

55. At all times during 1974, the elevators were unsafe and frequently inoperative.

56. At all times during 1974, the apartments were inadequately heated, and many units were frequently without heat.

57. At all times during 1974, hot water service was inadequate, and occasionally non-existent.

58. Frequently during 1974, Riverhouse Apartments experienced plumbing malfunctions.

59. Frequently during 1974, the roof of Riverhouse Apartments leaked.

60. Frequently during 1974, plaintiffs' apartments were flooded and their personal property was damaged.

61. Federal American Properties, Inc., acting on behalf of HUD and as the agent of said defendant, by a form letter dated November 18, 1974, informed all tenants of Riverhouse Apartments, including plaintiffs, that "we have been advised by the Department of Housing and Urban Development that due to the unsafe condition of the buildings, it has become necessary to close Riverhouse Towers Apartments. All residents must vacate the premises by December 31, 1974."

62. Exhibit "A" attached to these Requests for Admissions, is a true and accurate copy of the notice to vacate issued to plaintiffs by HUD's managing agent of Riverhouse Apartments, Federal American Properties, Inc.

63. The order to vacate issued to plaintiffs by HUD's managing agent of Riverhouse Apartments, Federal American Properties, Inc. was given pursuant to a program or project of rehabilitation and/or resale of Riverhouse Apartments undertaken by a federal agency, *viz.*, defendant HUD.

64. Plaintiffs removed themselves and their personal property from Riverhouse Apartments as a result of the order issued by HUD's managing agent of Riverhouse Apartments, Federal American Properties, Inc.

65. The acquisition of Riverhouse Apartments by defendant HUD resulted in the displacement of plaintiffs.

66. Plaintiffs are "displaced persons" within the meaning of 42 U.S.C.A. §4601(6), and are thereby entitled to moving and related expenses, pursuant to 42 U.S.C.A. §4622.

67. Plaintiffs are "displaced persons" within the meaning of 42 U.S.C.A. §4601(6), and are thereby entitled



to replacement housing payments, pursuant to 42 U.S.C.A. §4624.

68. Plaintiffs are "displaced persons" within the meaning of 42 U.S.C.A. §4601(6), and are thereby entitled to relocation assistance advisory services, pursuant to 42 U.S.C.A. §4625.

69. Defendants HUD and Hills, and their agents, have failed, neglected, and refused to notify plaintiffs of the availability of the benefits outlined in Request For Admissions numbers 66, 67, and 68 and the application procedure for obtaining the same.

70. Defendants HUD and Hills, and their agents, have failed, neglected, and refused to provide plaintiffs with the benefits outlined in Request For Admissions numbers 66, 67, and 68.

71. At the time HUD acquired Riverhouse Apartments, the structures had deteriorated to the point that they were virtually uninhabitable, and posed a health hazard to the residents thereof.

72. After the time HUD acquired Riverhouse Apartment, HUD undertook to repair and rehabilitate the Riverhouse Apartments.

73. After the time HUD acquired Riverhouse Apartments, it determined that the buildings were no longer safe for occupancy.

74. After the time HUD acquired Riverhouse Apartments, it determined that the required rehabilitation could not be completed while the buildings were occupied.

75. Plaintiffs Alexander, Danforth, Hood, Holland, Houston, Jackson, Pippens, Robinson, Washington,

Whitney and Young each paid defendant HUD or the preceeding owner of Riverhouse Apartments, a security deposit of one hundred dollars ($100.00), at or about the time each respectively leased his/her apartment at Riverhouse Apartments.

76. The security deposits of the plaintiffs noted in Request for Admission number 75 and paragraph number 45 of plaintiffs' Amended Complaint were deposited in an account separate from accounts maintained for other funds relating to the management of Riverhouse Apartments.

77. The records maintained by the managers of Riverhouse Apartments reflect that the security deposits of plaintiffs noted in Request for Admission number 75 and paragraph 45 of plaintiffs' Amended Complaint were deposited in a separate account.

78. Defendants HUD and Hills, and her predecessor in office have failed, refused and/or neglected to return the security deposits of the plaintiffs noted in Request for Admissions number 75 and paragraph 45 of plaintiffs' Amended Complaint.

79. That the Receiver of Riverhouse Apartments, Inc. followed the same procedures as outlined in Request for Admission number 76.

80. That the Receiver of Riverhouse Apartments, Inc. followed the same record-making procedures outlined in Request for Admission number 77.

81. That the Receiver of Riverhouse Apartments, Inc. delivered the funds maintained in the security deposit account outlined in Request for Admission number 76 to HUD on or about the date HUD purchased Riverhouse Apartments.



82. The funds maintained in the security deposit account which were delivered to HUD were sufficient to reimburse the plaintiffs named in Request for Admission number 75 and in paragraph 45 of plaintiffs' amended complaint for their security deposits.

/s/ RICHARD L. ZWEIG
RICHARD L. ZWEIG

/s/ John D. Hutchinson
JOHN D. HUTCHINSON
Legal Services Organization
of Indianapolis, Inc.
1955 North Central Avenue
Indianapolis, Indiana 46202
926-2374

ATTORNEYS FOR PLAINTIFFS

## CERTIFICATE OF SERVICE

Richard L. Zweig hereby certifies that a copy of the foregoing has been sent to Richard Darst, Assistant United States Attorney for Defendants United States Department of Housing and Urban Development and Carla Anderson Hills, 246 Federal Courthouse by depositing a copy hereof in the United States mail, first class postage prepaid this 19th day of September, 1975.

/s/ RICHARD L. ZWEIG
RICHARD L. ZWEIG
Attorney at Law

FEDERAL

American
Properties,
Inc.

TELEPHONE (*317*) *923-7251*

REPLY TO: *1913 Wendy Lane*
*Indianapolis, Ind. 46218*

*November 18, 1974*

*Dear Resident:*

*We regret to inform you that we have been advised by the Department of Housing and Urban Development, that due to the unsafe conditions of the buildings, it has become necessary to close Riverhouse Towers Apartments.*

*All residents must vacate the premises by December 31, 1974.*

*We are sorry for any inconveniences; if we can be of any assistance to you in relocating, please feel free to call our office, telephone 635-3371.*

*Thank you in advance for your cooperation.*

*Sincerely,*

*FEDERAL PROPERTY MANAGEMENT CORPORATION*

/s/ LINDA McCOY
*Linda McCoy,*
*Area Supervisor*

*LMcC/bjo*



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

**DEFENDANTS' RESPONSES TO PLAINTIFFS' REQUESTS FOR ADMISSION**

In response to plaintiffs' Requests for Admission, Defendants United States Department of Housing and Urban Development and Carla A. Hills, Secretary of the United States Department of Housing and Urban Development, admit, for the purpose of this action only, the truth of the following facts:

1-43. Admit.

44. The defendants admit that the mortgage on Riverhouse Apartments was insured and subsidized by the Defendant HUD under Section 221(d)(3), 12 USC §1715(l)(d)(3) of the National Housing Act. Section 221(a) of the National Housing Act states "This section is designed to assist private industry in providing housing for low and moderate income families and displaced families."

45. HUD records indicate that the note and mortgage were assigned to the Secretary by the Government National Mortgage Association on December 22, 1970.

46. Riverhouse Apartments, Inc., fell into default on said mortgage on July 1, 1970. On May 9, 1973, defendant HUD initiated proceedings for foreclosure in the United States District Court, Southern District of Indiana, Indianapolis Division, Civil Action No. IP 73-C-233.

47. Admit.

48. On August 13, 1974, Riverhouse Apartments was sold pursuant to the aforesaid decree and was purchased by

defendent HUD, and deed to HUD was recorded on September 24, 1974.

49. Admit.

50. Defendant HUD purchased Riverhouse Apartments at the Marshal's sale in order to minimize the financial loss to be incurred by the mortgage insurance funds.

50a. The defendants deny that the purchase of Riverhouse Apartments by HUD at the Marshal's sale constitutes "acquisition of real property for a program or project undertaken by a federal agency" within the meaning of 42 USC §4622.

51. On or about September 1, 1974, defendant HUD entered into an agreement with Federal Property Management Corporation to manage Riverhouse Apartments and perform authorized repairs and maintenance services for and on behalf of defendant HUD.

52. Admit.

53. Due to the fact that HUD did not take possession until September 1, 1974, it did not have information concerning the property at all times prior to its possession. HUD was notified on August 23, 1974 just prior to taking over of various deficiencies in the project (see Exhibit A). HUD also made an inspection in June of 1974 which disclosed some deficiencies (see Exhibit B).

54. See answer to 53.

55. See answer to 53.

56. See answer to 53.

57. See answer to 53.



58. See answer to 53.

59. See answer to 53.

60. See answer to 53.

61-62. Admit.

63. The defendents deny that the order to vacate issued to plaintiffs by HUD's managing agent of Riverhouse Apartments, Federal Property Management Corporation, was given pursuant to a program or project of rehabilitation and/or resale of Riverhouse Apartments undertaken by a federal agency, *viz.*, defendant HUD.

64. Plaintiffs removed themselves and their personal property from Riverhouse Apartments as a result of the letter issued by HUD's managing agent of Riverhouse Apartments, Federal Property Management Corporation.

65. The defendants deny that the acquisition of Riverhouse Apartments by defendant HUD resulted in the displacement of plaintiffs. Rather the unsafe conditions of the buildings made it necessary to close Riverhouse Apartments.

66. The defendants deny that plaintiffs are "displaced persons" within the meaning of 42 USCA §4601(6), and are thereby entitled to moving and related expenses, pursuant to 42 USCA §4622.

67. The defendants deny that plaintiffs are "displaced persons" within the meaning of 42 USCA §4601(6), and are thereby entitled to replacement housing payments, pursuant to 42 USCA §4624.

68. The defendants deny that plaintiffs are "displaced persons" within the meaning of 42 USCA §4601(6), and are

thereby entitled to relocation assistance advisory services, pursuant to 42 USCA §4625.

69. Due to the fact that, by statute, plaintiffs are not entitled to relocation assistance and payments under the Uniform Relocation Act, they have not been provided with notice of these benefits.

70. The defendants admit that defendants HUD and Hills, and their agents, have refused to provide plaintiffs with the benefits outlined in Request for Admissions numbers 66, 67, and 68.

71. At the time HUD acquired Riverhouse Apartments, the general living conditions were poor.

72. Other than performance of authorized repairs and maintenance services, HUD denies that, since acquisition, it undertook to repair and rehabilitate the Riverhouse Apartments.

73. Admit.

74. The defendants deny the statement as the Department has not undertaken to repair and rehabilitate the Riverhouse Apartments, other than to perform authorized repairs and maintenance services.

75. Plaintiffs Alexander, Danforth, Hood, Holland, Houston, Jackson, Pippens, Robinson, Washington, Whitney and Young each paid the preceding owner of Riverhouse Apartments, a security deposit of one hundred dollars ($100.00), at or about the time each respectively leased his/her apartment at Riverhouse Apartments.

76-77. Admit.

78. Defendants HUD and Hills, and her predecessor in office, admit that the refused to return the security deposits



of the plaintiffs, other than plaintiff Young, noted in Request for Admissions number 75 because other than plaintiff Young, the plaintiffs were not current in their rent payments and the security deposit was applied to rent under authorization of HUD Handbook 4315.1, Section 109(b)(1).

79-82. Admit.

I, Thomas P. O'Malley, declare that these statements are true to the best of my knowledge.

/s/ THOMAS P. O'MALLEY

Thomas P. O'Malley, Attorney Advisor
Indianapolis Area Office
United States Department of
Housing and Urban Development

## CERTIFICATE OF SERVICE

This is to certify that I have served a copy of the foregoing pleading upon the plaintiffs herein by mailing a copy thereof to counsel of record John D. Hutchinson, Legal Services Organization, Inc., 1955 N. Central Avenue, Indianapolis, Indiana 46202 on this 30th day of January, 1976.

/s/ RICHARD L. DARST

RICHARD L. DARST
Assistant United States Attorney
246 U. S. Courthouse
46 E. Ohio Street
Indianapolis, IN 46204

EXHIBIT A

STATE OF INDIANA
DIVISION OF LABOR
633-4473

BUREAU OF SAFETY EDUCATION & TRAINING
BUREAU OF ELEVATOR SAFETY
BUREAU OF FACTORY & BUILDING INSPECTION
I.O.S.H.A.
BUREAU OF WOMEN & CHILDREN
BUREAU OF MINES & MINING

DEPARTMENT OF
MEDIATION & CONCILIATION
DEPARTMENT OF
MINIMUM WAGE & CLAIMS
DEPARTMENT OF STATISTICS

August 23, 1974

Mr. Lester Davis
River House
Indianapolis, Indiana

Dear Mr. Davis:

Corrections for temporary operation of elevators #33724 and #33725 are as follows:

For #33725 South Elevator #2:
1. Reinstall or eliminate exposed wires at basement landing.
2. Install covers on the door operator and car top junction box.
3. Adjust all doors, door closers and interlocks.
4. Refasten all sight guards on all hoistway doors.
5. Bolt side access doors in the closed position.



6. Remove all litter and trash from elevator hoistway and pit area.

For #33724 North Elevator #1:
While the elevator is in its present state of repair, all hoist way doors shall be bolted in the closed position.

Very truly yours,

/s/ WILLIAM H. BALDWIN

William H. Baldwin
Chief Elevator Inspector

WHB:dw

P. S. Before final approval is given for all elevators, they must be restored to their original condition.

cc: Don Boltz, Haughton Elevator Co.
Jack Griffen, Receiver
Pat O'Malley, HUD
Charles Holifield, Housing Management Consultants

EXHIBIT A

CITY OF INDIANAPOLIS

RICHARD G. LUGAR, MAYOR
DONALD E. LAMB, CHIEF

FIRE DEPARTMENT HEADQUARTERS
301 EAST NEW YORK STREET
INDIANAPOLIS, INDIANA 46204

August 23, 1974

Mr. Choice Edwards
Deputy Director, H.U.D.
4720 Kingsway Drive
Indianapolis, Indiana 46205

Re: River House Apartments
1150-52 White River Dr., W.
Indianapolis, Indiana
Inspected: 8/22/74

Dear Sir:

You are hereby notified that an inspection of the above premises has been made by this bureau and our recommendations recorded. Attached hereto is a copy of the recommendations for your consideration and compliance.

Respectfully,

/s/ JAMES E. MITCHELL

James E. Mitchell, Chief
Director of Fire Prevention
Indianapolis Fire Department



cc/ Mr. Pat O'Malley, Dept. of H.U.D.
Mr. Ray Hendricks, Div. of Buildings
Mr. Jack Griffin, Griffin Realty
Mr. George Kline, Chief Electrical Inspector, City
Mr. William Goodwin, State Fire Marshal
Mr. James Crawford, Div. of Code Enforcement
Mr. Floyd Sterrett, Health & Hospital Corp.
files

EXHIBIT A

CITY OF INDIANAPOLIS

RICHARD G. LUGAR, MAYOR

DONALD E. LAMB, CHIEF

FIRE DEPARTMENT HEADQUARTERS
301 EAST NEW YORK STREET
INDIANAPOLIS, INDIANA 46204

August 23, 1974

Mr. Choice Edwards
Deputy Director, H.U.D.
4720 Kingsway Drive
Indianapolis, Indiana 46205

Re: River House Apartments
1150-52 White river Dr., W.
Indianapolis, Indiana
Inspected 8/22/74

Dear Sir:

We found the following violations of the Fire Code or unsafe conditions:

1. Most exits not marked or lights on.
2. Several stairway fire doors will not close tight.
3. Floor by floor alarm system out of order.
4. Standpipe shut-off wheels missing on several floors.
5. Elevators in poor condition.
6. Trash in stairwells and hallways.



7. Fire hose in hallway cabinets molded or missing on many floors. Some cabinets cannot be opened.
8. Parking in front fire lane.
9. Some exit doors are missing handles.
10. Fire hydrant in front of building faces away from building and difficult for engine to hook upto.
11. Incinerator chute doors in both towers on all floors are in need of repairs.
12. Incinerators are in deploreable condition.
13. Incinerator dump doors are not upto Code:
    A. No fuse links
    B. Do not close
    C. Are jammed by ashed and trash
14. All hose cabinets shall be restored to original condition according to Code.
15. Fire alarm systems shall be repaired in accordance with Fire Code.
16. All exit lights shall be repaired or replaced.
17. All exists servicing laundry room shall be unlocked.

Respectfully,

/s/ JAMES E. MITCHELL

James E. Mitchell, Chief
Director of Fire Prevention Bureau
Indianapolis Fire Department

/s/ LT. T. E. DYER
Lt. T. E. Dyer, Inspector

/s/ LT. NORMAN JOHNSON
Lt. Norman Johnson, Inspector

EXHIBIT A

Mr. Choice Edwards

August 23, 1974

Re: River House Apartments
1150-52 White River Dr., W.

1. To replace and maintain in accordance with A.B.C., Volume #1, Chapter 38, Section 3805-L, N.F.P.A., Volume #7; Pamphlet #14, Section 16, 32, Chapter 7.
   A. Missing and damaged fire hose.
   B. Missing brass hose nozzles.
   C. Missing proper type fire extinguishers.

2. To replace, repair and maintain in accordance with: A.B.C., Volume #1; Chapter 35, N.F.P.A. Volume #4; Pamphlet #101, Chapter 6, Section 6-3.
   A. Missing fire alarm pull stations.
   B. Reactivate entire system.

3. To replace, repair and maintain in accordance with: N.F.P.A. Volume #4, Pamphlet #101, Chapter 7, Section 7-113.
   Rubbish Chutes, doors and openings.

4. To replace, repair and maintain in accordance with: A.B.C. Volume #1; Chapter 34, N.F.P.A. Volume #4; Pamphlet #101, Chapter 5, Section 5-11
   All illuminated exit *lights and signs*—should be ceiling fixtures.

5. To repair in accordance with; N.F.P.A. Volume #4, Pamphlet #101, Chapter 11, Section 11-3221 (1 & 3).
   One (1) hour separations in corridors and stairwells—doors are not Code.



6. Point of notifications to tenants:
   Violations of the following:
   A. Setting fires in rubbish chutes.
   B. Intentionally damaging any fire equipment or signaling devices.
   C. Parking in fire lanes.

7. Electrical system shall be checked by licensed corp. N.F.P.A. Volume #5, National Electrical Code.

8. Elevators shall be in accordance with Indiana State Law (Chicago Elevator Code)

9. All non-unit doors shall be marked in accordance with N.F.P.A. #101 Chapter 5, Section 5-11, 5-11112.

10. Fire hydrant location—N.F.P.A. Volume #4, Chapter 4 pages 24-14.

To be knowledgeable of all recommendations, Refer to:

National Fire Protection Association #101—Chapter 11—Apartments.

IMMEDIATE STEPS SHALL BE TAKEN TO CORRECT THESE VIOLATIONS OR THE INDIANAPOLIS FIRE DEPARTMENT, FIRE PREVENTION BUREAU SHALL TAKE NECESSARY ACTION IN THE CLOSING OF THE RIVER HOUSE APARTMENTS.

EXHIBIT A

**NOTE:

ADDITIVE TO VIOLATION NUMBER 2: Fire alarm systems annunciator panel shall be provided and located in security officer's station and to be observed at all times. Municipal Code Title 5 of Marion County.

**ADDITIVE TO VIOLATION NUMBER 4:
11-3251—Every public space, hallway, stairway and other means of egress shall have illumination in accordance with section 5-10. Any apartment building with more than 25 living units shall have type 1 or type 2 emergency exit lighting.



EXHIBIT B

Mr. Daniel B. Bowman, Assistant Director,
Technical Service Branch

June 27, 1974

PTC:NWD:mev

Robert W. Dew

Riverhouse Apartments
Indianapolis, Indiana

As per Mr. B. G. Davis' request dated May 28, 1974, the Cost Evaluation Section has made a cursory evaluation on repairs necessary to bring the subject buildings and 28 unrentable apartments to a rentable condition.

We have also listed recommended alternate items of repair.

Our estimate of repairs as of June 17, 1974, is as follows:

Install recessed lights in hallways, exits and stairways.

Replace metal doors at electric power box with 3/0 metal frame and door.

Replace all window screens (approximately 2,058 screens).

Replace 25 ranges and refrigerators.

Replace drywall in unrentable units.

Replace rubber baseboard in unrentable units.

Paint interior of unrentable units.

Replace, repair and clean floors in unrentable units.

Repair plumbing in unrentable units.

Electric repair in unrentable units.

Replace entry doors in unrentable units.

Repair incinerator chute and install eight (8) new doors on eight (8) floors.

Total $80,350.00

The following are recommended alternate items of repair:

| | |
|---|---|
| Rehabilitate two (2) elevators in each building. | $52,000.00 |
| Install two (2) compactors, one (1) in each building. | 8,300.00 |
| Construct retaining walls, blacktop, sloped ground area adjacent to concrete common area. | |
| Install six (6) foot chain link fence at patio or common area. | |
| Landscape and renovate green area. | 10,370.00 |
| Total | $70,670.00 |
| Total | 80,350.00 |
| Accumulative Total | $151,020.00 |

Chief, Cost Evaluation Section



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

James E. Armstrong, Area Director
Office of the Area Director, S

5.4HP: JF
190730

William R. Lake, Housing Management Division, H

First Narrative Report
Riverhouse Apartments, Inc.
Indianapolis, Indiana
Project #073-55020

Pursuant to paragraph 4 of HM 4315.1 the following narrative report has been prepared on the above captioned project.

Sponsorship and Original Need

1. Riverhouse Apartments is a former 221(d)(3)BMIR highrise property consisting of two 12-story buildings located west of downtown Indianapolis on the west bank of the White River.

2. The sponsor of the project was Flanner House Homes, Inc., a nonprofit institution in the city; and the original incorporators of the mortgagor, Riverhouse Apartments, Inc., were C. O. Alig, Jr., George H. Dirks and F. Boyd Hovde. The original Board of Directors was W. William L. Schloss, George A. Dirks, R. L. Brokenburr, C. O. Alig, Jr., Charles Brewer, Carl Dortch, F. W. Dunn, F. M. Falender, Donald B. Forbes, Eugene B. Glick, D. C. Glover, A. B. Griffith,

P. M. Hadley, F. Boyd Hovde, Glenn A. Kuhn, Sr., E. B. Newill, George S. Olive, Jr., Eugene S. Pulliam, William T. Ray, Russell J. Ryan, William J. Stout, Marion Stuart and Clarence C. Wood. The director of Flanner House, the sponsor, was Dr. Cleo Blackburn.

3. A note was executed by the Mortgagor in favor of Indiana National Bank on December 7, 1967, in the amount of $4,233, 000.00, which note was initially endorsed on December 12, 1967. A note was finally endorsed on December 12, 1969, for the original amount.

4. From its inception, the project has suffered from poor management, high tenant turnover, poor collections and high vandalism. The Mortgagee's corporate charter was revoked in 1970 for failure to file annual statements.

The project, which was originally conceived as housing for families, has failed and suffers from lack of amenities. The project has no air conditioning and there are inadequate recreational facilities. The hallways are narrow and the two (2) and three (3) bedroom apartments are small in size. The project has been cited for various health and safety defects and the project is now unsafe for habitation.

The tenants are continually incapacitating the elevators. While the project was in the hands of the receiver, a three year-old child fell down the elevator shaft last August 1974. (See exhibits A-D.)

Due to unsafe conditions, non-payment of rents, and the excessive cost of bringing the project back into good condition, we feel that it is in the best interest of the Government to close the Riverhouse Apartments until we can seil the property.



The management company has instituted 117 eviction suits against delinquent tenants. These suits are being contested by some of the tenants, who are represented by the Legal Services Organization, and it is entirely possible that evictions will be delayed.

We originally requested that the management agent send out notices to the tenants that we were closing the building as of December 31, 1974. However, due to the tenants contacting LSO the move out has been delayed. At present we have 22 units still occupied.

Local Economic Conditions & Neighborhood Data

This project is in close proximity to Indiana University-Purdue University extension in Indianapolis (IUPUI), a growing urban complex of over 17,000 students, as well as being close to General Hospital and the Indiana University Medical Center. The project is within walking distance to public transportation. There are no shopping centers within walking distance. The project is located in the inner city of Indianapolis in a deteriorating minority neighborhood. The city itself, according to the December 1974 report of the Chamber of Commerce, had 6.5% to 7% unemployment rate, and this rate does not take into account the large layoffs from the automobile plants which have occurred subsequent to that date. The vacancy rate for apartments in the inner city is 10%.

Review of Owner's Rental Policies

The project's original rents of $108 for one bedroom, $126.50 for two bedrooms and $145 for three bedrooms are still in effect. As of October 1974 only 45 of the 162 tenants were current in their rent. By November 30, only 33 of the 149 tenants were current. Security deposits have been returned to all tenants entitled to them.

Furnishings and Equipment

There are no furnished units.

Taxes

Taxes were successfully reduced in 1972. The taxes on the project for 1973 payable 1974 were $89,829.62. The assessed value of the property is $889,390. The taxes are the net payable after a 20% credit is deducted under a new state law.

Photographs

Photographs are included as required, but there are no floor plans available at this time.

Effect of Foreclosure Action on Tenant Lease

All leases have been terminated in the actions to close the buildings.

A disposition program will be submitted as soon as all tenant litigation is resolved.

Acting Director

cc:
Cameron, Office of Property Disposition
ARA for HM

HP:Fleming:E 1/29/75 Ext. 7038
REV:HP:Ginger:E 1/30/75 Ext. 7051 (2)

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-874

GENANETT ALEXANDER, *et al.*,
*Petitioners*

vs.

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *et al.*,
*Respondents*

## ON A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

## BRIEF FOR PETITIONERS

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-874

GENANETT ALEXANDER, *et al*,
*Petitioners*

vs.

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *et al*.,
*Respondents*

---

## ON A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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## BRIEF FOR PETITIONERS

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### OPINIONS BELOW

The opinion of the Court of Appeals for the Seventh Circuit is reported at 555 F.2d 166, and is printed in the Petition for a Writ of Certiorari at pages A6-A16. The order of the court of appeals denying appellants' Petition for Rehearing *En Banc* is printed in the Petition for a Writ of Certiorari at pages A17-A18. The judgment of the United States District Court for the Southern District of Indiana is

unreported, and is printed in the Petition for a Writ of Certiorari at pages A1-A6.

## JURISDICTION

The judgment of the court of appeals was entered on May 20, 1977. The order of the court of appeals denying appellants' Petition for Rehearing *En Banc* was entered on September 19, 1977. The petition for a Writ of Certiorari was filed on December 16, 1977, and the petition was granted on June 19, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). On July 7, 1978, the Clerk of the Court extended the time for filing the opening brief to September 5, 1978.

## STATUTORY PROVISIONS INVOLVED

Section 101(6) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894, 42 U.S.C. §4601(6), provides:

> The term "displaced person" means any person who, on or after the effective date of this Act, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance;.
>
> . . .

## QUESTION PRESENTED FOR REVIEW

Whether tenants who reside in a housing project acquired by the United States Department of Housing and Urban Development [HUD] and who are ordered by HUD to vacate their residences so HUD can implement its property disposition program are "displaced persons" under Section 101(6) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §4601(6), and thus entitled to relocation assistance.



## STATEMENT OF THE CASE

Petitioners (hereinafter "tenants") are low and moderate income persons who formerly resided at Riverhouse Towers Apartments (hereinafter "Riverhouse"), a 294-unit complex located in Indianapolis, Indiana [A.20,28]. Riverhouse originally was constructed by a non-profit corporation, Riverhouse Apartments, Inc., which secured permanent financing for the complex through a mortgage insured and subsidized by HUD under Section 221(d)(3) of the National Housing Act as amended, 12 U.S.C. §1715*l*(d)(3) [20-21, 28]. Like all Section 221 (d) (3) housing, Riverhouse was constructed for the purpose of providing decent housing for low and moderate income persons, and particularly those who were displaced by governmental action.

In July, 1970, shortly after the buildings were constructed, the owner defaulted on its mortgage, and in December, 1970, the mortgagee assigned the mortgage to HUD in exchange for receipt of mortgage insurance proceeds. [A.21, 28]. During this period, HUD took a relatively passive role with respect to the operation of the project, choosing instead to work with the owner in attempting to cure its default. [Deposition of Rae Ginger, page 10, Ques. No. 47] However, in the face of a continuing default by the owner, the United States initiated foreclosure proceedings in the United States District Court in May, 1973 [A.21, 28], and during the pendency of that suit the property was operated by a court-appointed receiver. [Pet. App. A2]. On June 6, 1974, a decree of foreclosure was entered, ordering that Riverhouse be sold by the United States Marshal, with proceeds to be applied to the balance due on the mortgage, and costs. [A.21, 28]. On August 13, 1974, Riverhouse was offered for sale pursuant to the Court order, and HUD purchased the property on that date. [A.21, 28-29].

Upon purchase, HUD became actively involved in the operation of Riverhouse and hired a management agent to manage all aspects of the property. It instructed the agent to lease as many apartments as possible, to evaluate the nature and extent of the repairs needed, and to ask for authorization to complete them. [Deposition of Rae Ginger, P. 28, Ques. Nos. 160-162]. At the same time, in accordance with its *Property Disposition Handbook—Multi-family Properties*, RHM 4315.1 (1971), HUD began its own evaluation of the future of Riverhouse by analyzing the general condition of the buildings, their history, the nature of the surrounding community, the housing needs of the city's low and moderate income population, and the like. [A.44-47]. This evaluation culminated in what HUD termed the "First Narrative Report" and the "Third Narrative Report" which made recommendations for the future use of the property. Although HUD had broad authority under 12 U.S.C. §1713 *l* to renovate, modernize and manage the property, or, in the alternative, to rehabilitate and sell it to a private developer or public housing authority, HUD chose to evict the tenants,[1] close the buildings, and retain ownership with an eye towards sale. [Deposition of Rae Ginger, p. 34, Ques No. 195; p. 35, Ques. No. 201; p. 53, Ques. Nos. 303-304]. In closing Riverhouse, HUD imposed the financial burden of relocation upon the tenants, and, indeed, HUD provided

[1] The letters ordering the tenants to vacate read as follows:

We regret to inform you that we [management agent] have been advised by the Department of Housing and Urban Development, that due to the unsafe conditions of the buildings, it has become necessary to close Riverhouse Towers Apartments.

All residents must vacate the premises by December 31, 1974.

We are sorry for any inconveniences; if we can be of any assistance to you in relocating, please feel free to contact our office, telephone 635-3371.

Thank you in advance for your cooperation.



the tenants with no relocation assistance whatsoever. [A.7-14].

In June, 1977, HUD placed Riverhouse on the market for sale, and on July 13, 1977, HUD entered into a contract to sell the complex to a private party. The transfer of title was suspended, however, so that the HUD Area Office could re-evaluate its decision to sell in light of new property disposition regulations adopted by HUD in January, 1977, found in 24 C.F.R. Part 290. After completing the review required by the new regulations, HUD again decided to sell the property, and title was transferred on January 30, 1978.[2]

## SUMMARY OF THE ARGUMENT

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§4601-38 mandates federal agencies to provide relocation assistance to any "displaced person." Under the Act, a displaced person is anyone who is required to move *either* (a) as a result of the acquisition of property for a program or project undertaken by a federal agency or with federal financial assistance; or (b) as a result of a written order by the acquiring agency to vacate real property for a program or project undertaken by a federal agency or with federal financial assistance. Eligible persons are entitled to a dislocation allowance and moving expenses (42 U.S.C. §4622); relocation assistance, which includes an assurance that decent, affordable replacement housing is actually available (42 U.S.C. §4626); and replacement housing payments in the event that the only replacement housing is at higher than affordable prices (42 U.S.C. §4624).

[2] These facts are brought to the attention of the court by agreement between the parties and are set forth in the HUD letter reproduced in the addendum to this brief.

The tenants are eligible for Relocation Act assistance since they are "displaced persons" within the plain meaning of 42 U.S.C. §4601(6). In short, they were required to move from their homes by virtue of written orders from HUD's management agent after HUD acquired Riverhouse at a foreclosure sale. Further, the orders to vacate were issued in connection with a federal program, *viz.* the HUD Property Disposition Program found in the HUD *Property Disposition Handbook – Multi-family Properties*, RHM 4315.1 (1971). Because they meet the plain meaning of the statute, and because the underlying policies of the Relocation Act are served by a finding of their eligibility, the tenants are entitled to the full range of benefits provided by the Relocation Act.

## ARGUMENT

### I.

### HUMANITARIAN CONCERNS FOR THE PERSONAL HARDSHIPS CAUSED BY UNASSISTED DISPLACEMENT AND THE INEQUITIES CAUSED BY NON-UNIFORM FEDERAL RELOCATION PROVISIONS DOMINATED CONGRESSIONAL DELIBERATIONS AND COMMAND A CONSTRUCTION OF THE ACT WHICH IS FAITHFUL TO ITS PLAIN LANGUAGE.

The Uniform Relocation Assistance And Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§4601-38 (hereinafter "Relocation Act") was enacted by Congress in 1970 following a decade of legislative activity on the issue of government-caused displacement. Two concerns dominated those deliberations: 1) that the hardships imposed by unassisted relocation should be relieved where federal activities cause displacement; and 2) that the disparities in the various government relocation policies and provisions were unjust. These concerns focused upon the *victims* of displacement and together they gave rise to twin themes found in the Relocation Act—adequate assistance and uniformity. Hence, the simply stated policy of the Act:

> The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

42 U.S.C. §4621.

Prior to the enactment of the Relocation Act, the first serious effort to confront the severe hardship of displacement is found in the Housing Act of 1954, which provided financial assistance for building low-cost housing for displaced families.[3] The Senate Report on the Housing Act of 1954 emphasized Congress' concerns for persons displaced by urban renewal and other forms of government action by stating:

> Eligible displaced families would include families which are required to move because of *any form of governmental action*, such as land acquisition by a public body, *closing or vacating of dwellings by public officials* or the eviction of families from public housing because of their income. (emphasis added)

Senate Report No. 1472, 83d Cong., 2d Sess., *reprinted in* 1954 U.S. Code Cong. & Adm. News, at 2748.[4] The breadth of concern at this early stage of Congressional consideration of displacement is instructive as well as prophetic. The hardships suffered by those ordered to vacate their homes by the closing of occupied government

[3] In 1935 Congress gave (the Tennessee Valley Authority) jurisdiction to "advise and cooperate" (but not make payments) in the "readjustment" of people displaced. TVA Act of 1933, as amended, Pub. L. 412, 49 Stat. 1075, 1080 (1935). In 1951, military departments were authorized to pay moving costs when land was acquired for military projects. Act to Authorize Certain Construction of Military and Naval Installations etc., §501(b) Pub. L. 155, 65 Stat. 364 (1951).

[4] It would be particularly anomalous if the Riverhouse tenants were relegated to suffering the costs of relocation because of HUD's decision to force them from their homes. Riverhouse was constructed pursuant to §221(d) (3) of the Housing Act of 1961, 12 U.S.C. §1715 *l*(d) (3), a later modification of the 1954 provision. Section 221(d) (3) was also designed in specific part to house displaced persons. See, 12 U.S.C. §1715 *l*(a), 1715 *l*(d) (3) (iii), 1715 *l*(f). Indeed, it would be particularly ironic if persons displaced from housing which was specially built to relocate displaced persons (as Riverhouse was), could receive no relocation assistance when forced to leave by the government.



property are the same as those imposed upon persons who vacate for construction of a public facility, and Congress recognized that assistance in relocating should be provided in each instance.

Shortly after the passage of the Housing Act of 1954, Congress passed a number of acts designed to provide relief to persons displaced by a variety of governmental actions.[5] These acts provided relief on a program-by-program basis and the relief varied greatly in terms of eligibility for, and the amount of, relocation assistance.

By 1961, Congress realized that its earlier efforts to provide relocation assistance had not been adequate and that major inequities had resulted from the amalgam of relocation laws. The House of Representatives created the Select Subcommittee on Real Property Acquisition of the Committee on Public Works to study these programs. Hearings were held, and the report of the Subcommittee[6], which became a principal reference in subsequent deliberations[7], discussed and documented a wide range of

[5] For example: Housing Act of 1956, §505, Pub. L. 1020, 70 Stat. 1091, 1100 (1956) (urban renewal); Landowners and Tenants — Lands Acquired For Water Conservation etc. — Reimbursement for Moving Expenses, etc., Pub. L. 85-433; 72 Stat. 152 (1958). Others arose in the 1960's. For example: Federal-Aid Highway Act of 1962, §5, Pub. L. 87-866; 76 Stat. 1145 (1962); Urban Mass Transportation Act of 1964, §7, Pub. L. 88-365; 78 Stat. 302 (1964); Housing Act of 1964, §§401, 405, 406, 76 Stat. 1145 (1964) (public housing).

[6] House Comm. on Public Works, *The Study of Compensation and Assistance for Persons Affected by Real Property Acquisition in Federal and Federally-Assisted Programs*, 88th Cong., 2d Sess. (Comm. Print No. 13, 1964) (hereinafter "Study of Compensation")

[7] *See*, for example, references to the *Study of Compensation* in 111 Cong. Rec. 6532-6533 (1965) (remarks of Sen. Edmund Muskie introducing S.1681); Hearings on H.R. 14898, H.R. 14899, S.1 and Related Bills Before the House Comm. on Public Works, 91st Cong. 1st and 2nd Sess. (1970) p. 2 (hereinafter "House Hearings on S.1") (remarks of Rep. Fallon introducing S.1).

displacements resulting from governmental acquisitions, reached multiple conclusions on how to treat the problem, and prepared a draft uniform relocation act based upon its conclusions. Among its findings were the following:

> The amount of disruption caused by Federal and federally assisted programs is astoundingly large. The accelerated pace of Government activity,... make(s) any lessening of current activity in the foreseeable future highly unlikely.
>
> * * *
>
> Most displacements affect low-or moderate-income families or individuals, for whom a forced move generally is a very difficult experience. The problem is aggravated for the elderly, the large family, and the non-white displacee. The lack of standard housing at prices or rents that low or moderate income families can afford is the most serious relocation problem.
>
> * * *
>
> ...There are vast differences in the relocation provisions of the various programs. The scope or amount of the relocation payment or the assistance provided for a displaced person frequently depends more on the program involved than the loss suffered.
>
> * * *
>
> Concern for the effects of displacement by Government action is consistent with the policy of the Nation to assure economic and social opportunity for every citizen. Economic costs of displacement should be borne by the public on a uniform basis in all programs.... A broad range of relocation services and other assistance should be provided for all program displacees, consistent with their needs.[8]

Concurrently, the Senate reviewed the injustices caused by the various relocation programs as they affected elderly citizens.[9]

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[8] *Study of Compensation, supra*, at pp. 105, 106, and 112.

[9] *See*, Hearings before Subcomm. on Involuntary Relocation of the Elderly, Special Comm. on Aging, U.S. Senate, 87th Cong., 2d Sess., (1962).



Thus, by 1965, both houses of Congress had begun to consider the inadequacy and non-uniformity of relocation assistance, and the first uniform bills were introduced.[10] In the hearings on each of the bills, the dual themes of inadequate and inconsistent treatment of persons displaced by the government were constantly reiterated. In his introductory remarks to the hearings on S.1 (which later became the Relocation Act), Senator Muskie poignantly stated the policy concerns of all who testified in support of the uniform relocation bills as he briefly traced the history of deliberations on those bills:

> Mr. President, a major item of unfinished business which should be accorded highest priority in this new Congress is the passage of legislation assuring consistent and fair treatment of those who are uprooted from their homes and places of business by projects carried out by the Federal Government and by State and local governments with Federal assistance. That is the purpose of the bill I am introducing today.
>
> ...[1968 Senate hearings] demonstrated in intensely human terms the shattering effects of the displacement of people from their homes, their neighborhoods, their businesses to make way for public projects. They brought out clearly the confusion and inequities caused by the diversity and inadequacy of the measures available to public agencies to reduce the hardships of displacement.
>
> ...[The 1962-64 House Select Sub-Committee] rendered its monumental report in 1964. It showed conclusively and in detail the inequities and hardships suffered by hundreds of thousands of families, businessmen, and farmers for the sake of projects intended to benefit the public as a whole.

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[10] *See*, S.1201, S.1681, H.R. 10212, and H.R. 11869, all introduced in 1965.

> ...It is imperative that the Government of the United States deal consistently and fairly with all those whose property is taken for public projects and all those who are displaced from their homes and their businesses. When called upon to make this adjustment in their personal lives for the public good, such persons must be able to turn to the responsible agency, whether of a local government, the State, or the Federal Government, and be assured of the help they need to reestablish themselves in homes or places of business no less satisfactory than those they were forced to leave.

115 Cong. Rec. 772 (1969).

From the 89th Congress through the 91st Congress, these dual themes were not only reiterated; they provided the impetus for change after change in the Act which consistently extended its coverage and broadened the nature and amount of benefits. By the date of final passage of S.1, most provisions had been liberally expanded from their S. 1681 origin in 1965. For example, maximum moving expenses were increased (from $200 to $300 for individuals and families, from $5,000 to $10,000 for businesses, and from $1,000 to $10,000 for farm operators);[11] replacement housing allowances were expanded (from $1,000 to $4,000 for tenants and from $1,000 to $15,000 for owners);[12] the provision that benefits be discretionary in federally-assisted programs was amended to make such benefits mandatory;[13] a new provision was added requiring federal agencies to supply adequate replacement housing where such housing was not available;[14] and a section was added to provide that relocation benefits would not be considered income for either tax or Social Security eligibility purposes.[15]

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[11] *Compare* §3 of S.1681 (1965) with 42 U.S.C. §4622.

[12] *Compare* §3 of S.1681 (1965) with 42 U.S.C. §§4623, 4624.

[13] *Compare* §8 of S.1681 (1965) with 42 U.S.C. §4630

[14] From no provision in S. 1681 (1965) to 42 U.S.C. §4626.

[15] From no provision in S.1681 (1965) to 42 U.S.C. §4636.



Furthermore, as Congressmen expressed concern about particular situations, the original bill was expanded to ensure coverage. For example, Senator Baker's concern for displacements of outdoor advertising became covered in 42 U.S.C. §4601(7) (D);[16] Representative Koch's concern for a special New York City situation is the subject of uncodified Section 219 (84 Stat. 1894, 1903);[17] Senator Tyding's concern for displaced "mom and pop" stores was covered in §4622(c);[18] and Representative Cleveland's concern for major New Hampshire landowners who, because of the scarcity of land, might have difficulty relocating, was answered by 42 U.S.C. §4638.[19]

The hallmark of the Relocation Act, then, was to provide uniform and fair treatment of all persons forcibly displaced to serve the public good. From the introduction of the first uniform bills to the passage of the Act, these dual concerns were voiced in hearings and in floor debates, by senators[20] and representatives[21] of both parties across the

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[16] Hearings on S.1 Before the Subcomm. on Intergovernmental Relations of the Senate Comm. on Government Operations, 91st Cong. 1st Sess. (1969), pp. 253-254 (hereinafter "Senate Hearings on S.1").

[17] Senate Hearings on S.1 at pp. 164-169; House Hearings on S.1 at pp. 65-69.

[18] Senate Hearings on S.1 at pp. 78-83.

[19] 116 Cong. Rec. 40169 (1970).

[20] For example: Sen. Tydings (Dem. Md.), 115 Cong. Rec. 31534 (1969); Sen. Percy (Rep. Ill.), 116 Cong. Rec. 42138-42139 (1970); Sen. Bible (Dem. Nev.) Senate Hearings on S.1, p. 254; Sen. Sparkman (Dem. Ala.), Hearings on S.1201 and S.1681 Before Subcomm. on Intergovernmental Relations of the Senate Comm. on Government Operations, 89th Cong. 1st Sess. (1965), pp. 56-61 (hereinafter "Senate Hearings on S.1201"); Sen. Robert Kennedy (Dem. N.Y.), Senate Hearings on S.1201, pp. 61-64; Sen. Miller (Rep. Iowa), Hearings on S.698, S.735, S.458, and S.2981 Before Subcomm. on Intergovernmental Relations of Senate Comm. on Government Operations, 90th Cong., 2d Sess. (1968), pp. 133-134 (hereinafter "Senate Hearings on S.698").

[21] For example: Rep. Gonzalez (Dem. Tenn.), House Hearings on S.1, pp. 110-111; Rep. Green (Rep. Ore.), House Hearings on S.1, pp. 58-62; Rep. Horton (Rep. N.Y.), House Hearings on S.1, pp. 114-115;

country, by local officials[22] and federal officials,[23] by presidents of the United States,[24] and by private organizations.[25] These deep concerns formed the seminal basis for the Act's most important provisions.

> This legislation...provides a humanitarian program of relocation payments, advisory assistance,

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Rep. Jacobs (Dem. Ind.) 116 Cong. Rec. 40167 (1970); Rep. Dwyer, (Rep. N.J.), Hearings on S.561 *et al.* Before House Committee on Governmental Operations,89th Cong., 2d Sess. (1966) pp. 213, 216-217 (hereinafter "House Hearings on S.561").

[22] For example: Mayor Thomas D. Alesandro, III (Mayor of Baltimore and representing the National League of Cities and the U.S. Conference of Mayors) Senate Hearings on S.1, pp. 84-95. Hon. John A. Volpe (Governor of Massachusetts) Senate Hearings on S.698, pp. 480-482. Hon. Chuck Hall, (Mayor of Dade County, Florida and representing the National Association of Counties) Senate Hearings on S.1201, pp. 99-104.

[23] For example: Lawson B. Knott (Administrator, General Services Administration) Senate Hearings on S.1, pp. 172-185. Richard C. VanDusen (Undersecretary, Department of HUD) House Hearings on S.1, pp. 1025-1036. Robert Weaver (Secretary, Department of HUD) Sen. Hearings on S.698, pp. 393-410, esp. 398-399. Harold Seidman (Ass't Director for Management and Organization, Bureau of the Budget) House Hearings on S.561, pp. 307-313, esp. p. 312.

[24] President John Kennedy, *reported in* Advisory Comm. on Intergovernmental Relations, *Relocation: Unequal Treatment of People and Businesses Displaced by Governments* (1965), p. 66. President Lyndon Johnson, 110 Cong. Rec. 1156 (1964). President Richard Nixon, 7 Weekly Comp. of Presidential Documents (1971), pp. 14-15.

[25] For example: Clarence Mitchell (Director, Washington Bureau, NAACP). Senate Hearings on S.1201 and S.1681, pp. 236-240. William Slayton, (Executive Vice President of American Institute of Architects) House Hearings on S.1, pp. 285-289. William L. Rafsky (President, National Association of Housing and Redevelopment Officials) Senate Hearings on S.698, pp. 275-280. Mrs. Barbara Reach (Community Service Society, New York, N.Y.) House Hearings on S.1, pp. 336-348. James Kelso (Executive Vice President, Greater Boston Chamber of Commerce) Senate Hearings on S.1201 and S.1681, pp. 322-3. Wendell Freeland (National Urban League) Senate Hearings on S.698, pp. 337-356. Yale Rabin, House Hearings on S.1, pp. 487-493.



> assurance that comparable decent, safe and sanitary replacement will be available for displaced persons prior to displacement....It establishes a uniform policy on real property acquisition practices for all Federal and federally assisted programs. And perhaps most important of all, it gets to the heart of the dislocation problem by providing the means for positive action to increase the available housing supply for displaced low and moderate income families and individuals.[26]

In keeping with Congress' compassionate concern for those displaced by governmental action, persons who qualify for Relocation Act benefits are entitled to:

(1) moving expenses, 42 U.S.C. §4622;

(2) a dislocation allowance of $200, 42 U.S.C. §4622;

(3) relocation assistance, which includes assurance that decent, affordable replacement housing is actually available to the tenants, 42 U.S.C. §4626; and

(4) where the only replacement housing available is at higher than affordable rentals, replacement housing payments to cover the difference (to a limit of $4,000), 42 U.S.C. §4624; 24 C.F.R. §42.95(c).

Thus, if the tenants prevail in their argument that they are displaced persons within the meaning of the Relocation Act they will be entitled to reimbursement for the moving expenses which they incurred when they left Riverhouse, up to $200; a dislocation allowance of $200; and a housing replacement allowance of not more than $4,000. Further, should the tenants prevail, in the future HUD will be required to assure that decent, safe and sanitary replacement housing is available for those being displaced before it decides to evict the residents pursuant to its Property Disposition Program.

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[26] H. Rep. No. 91-1656, 91st Cong., 2d Sess., (1970), p.4, *printed in* 1970 U.S. Code Cong. & Adm. News, 5850, 5852.

## II.

## THE TENANTS ARE "DISPLACED PERSONS" WITHIN THE MEANING OF THE RELOCATION ACT BECAUSE THEY MOVED FROM RIVERHOUSE TOWERS APARTMENTS AS A RESULT OF A WRITTEN ORDER TO VACATE ISSUED BY HUD'S MANAGEMENT AGENT FOLLOWING ACQUISITION OF RIVERHOUSE BY HUD, AND THE ORDER TO VACATE WAS ISSUED IN CONNECTION WITH HUD'S PROPERTY DISPOSITION PROGRAM.

Eligibility for benefits under the Relocation Act is determined by the definition of "displaced person", which includes:

> ...any person who, on or after January 2, 1971, moves from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance;... .

42 U.S.C. §4601(6). Hence, to be entitled to benefits as a "displaced person" under the Relocation Act, a person must be required to move *either* (a) as a result of the acquisition of property for a program or project undertaken by a federal agency or with federal financial assistance ("acquisition clause"); or (b) as a result of a written order by the acquiring agency to vacate real property for a program or project undertaken by a federal agency or with federal financial assistance ("written order clause").

It is axiomatic that where the words chosen by Congress provide a plain meaning, courts need not look beyond those words unless the plain meaning leads to absurd or futile results or is plainly at variance with the policy of the



legislation. *Tennessee Valley Authority v. Hill*,____U.S. ____, 98 S. Ct. 2279 (1978); *Burns v.Alcala*, 420 U.S. 575 (1975); *Richards v. United States*, 369 U.S. 1 (1962); *United States v. American Trucking Assns.*, 310 U.S. 534, 543 (1940). In the instant case, the plain meaning of the Act compels a finding of tenant eligibility for statutory entitlements.

The tenants meet the unambiguous requirements of the written order clause of 42 U.S.C. §4601(6). All tenants moved from their apartments pursuant to written orders issued by HUD's agent shortly after HUD purchased the apartment complex. Further, the orders to vacate were issued in connection with HUD's Property Disposition Program, found in the HUD *Property Disposition Handbook—Multi-family Dispositions* RHM 4315.1 (1971). Thus, the tenants qualify as "displaced persons" under the Act's clear language and are eligible for relocation benefits.

Although the tenants meet the requirements set forth in the statute, the court of appeals denied their eligibility for Relocation Act benefits. In so doing the court augmented the plain language of the Act with concepts which limited and distorted the statute's facial meaning. Relying heavily upon *Caramico v. Sec. of Dept. of Housing and Urban Development*, 509 F. 2d 694 (2d Cir. 1974), the court held that there was no program or project connected with the displacement of the tenants.

> ...[W]e conclude that HUD's written order to the tenants of Riverhouse to vacate by December 31, 1974 was not for...a program or project [undertaken by a Federal agency].

*Alexander v. HUD*, 555 F. 2d 166, 169 (7th Cir. 1977). However, the reasons employed by the lower court in arriving at this holding unfortunately are not at all clear.

At one point the court intimates that only "voluntary" acquisitions satisfy the Act and that Riverhouse was not acquired voluntarily. *Id.* At another point, it hints that only "construction" projects are encompassed by the Act and that Riverhouse did not involve construction. *Id.* at 169-170, n.3. And finally, it states that it could not see how closing down a project could be part of a program providing public benefits. *Id.* at 170. Significantly, all of this was done without any review of the lengthy legislative history which culminated in the Relocation Act.

In the ensuing arguments, the tenants respond to these various intimations, suggestions and the holding of the court of appeals and to an additional interpretation urged by HUD in its *Brief in Opposition to the Petition for a Writ of Certiorari*. More specifically, we will demonstrate that:

A) Nothing in the Act or its legislative history suggests an inquiry into the voluntariness of acquisitions;

B) The written order clause encompasses both pre-acquisition and post-acquisition displacements; and

C) The Property Disposition Program undertaken by HUD was the program for which the tenants were displaced, rather than the Section 221(d) (3) program erroneously relied upon by the court below.

In doing so, the tenants investigate the legislative history of the Relocation Act, but only to respond to the unsubstantiated alterations argued by HUD and made by the court of appeals. Nothing in that history is at all inconsistent with the plain words and meaning of the statute.



## A. THE RELOCATION ACT EXTENDS TO ALL ACQUISITIONS OF REAL PROPERTY BY THE GOVERNMENT.

The written order clause of 42 U.S.C. §4601(6) provides that anyone who moves from real property as the result of the written order of the acquiring agency to vacate real property for a federal program or project is a displaced person. In the instant case, no one disputes that HUD is an "agency" and that HUD "acquired" Riverhouse within the common meaning of that word. No one disputes that HUD, having acquired Riverhouse, served upon each tenant an order to vacate. And no one disputes that the tenants moved from Riverhouse "as a result of" HUD's written order. While the court of appeals does not argue with these facts, it intimates that the tenants fail to meet the spirit of the written order clause because the acquisition which preceded the order to vacate was involuntary. *Alexander v. HUD, supra*, at 169. In this regard, the court relied upon *Caramico v. HUD, supra*, where the Second Circuit found that tenants evicted by a defaulting mortgagee prior to HUD's acquisition were not eligible for Relocation Act benefits.[27]

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[27] In *Caramico*, a non-owner occupants of two-to-four family dwellings were ordered to vacate their homes pursuant to an FHA regulation which required vacant delivery of property by private owners who desired to convey their property to HUD. See, 24 C.F.R. §203.381. The tenants claimed that they were displaced persons within the meaning of the Relocation Act because HUD was the acquiring agency, and HUD imposed the vacant delivery requirement. On its facts, *Caramico* is readily distinguishable. First, HUD was not the mortgagee in *Caramico*. Second, in *Caramico*, HUD did not foreclose the mortgage and did not purchase the property from which the tenants were evicted. Third, there the mortgagee was required to vacate the buildings prior to conveyance to HUD. Fourth, the program for which the tenants were evicted in *Caramico* was the mortgage insurance program, whereas here the program is the HUD property disposition program. Finally, *Caramico* interpreted the acquisition clause, whereas this case rests upon the written order clause.

> Finding a crucial difference between mortgage insurance acquisitions and acquisitions under programs covered by URA, the Second Circuit characterized the former as "random and involuntary while normal urban renewal contemplated a conscius government decision to dislocate some so that an entire area may benefit."
>
> * * *
>
> Although distinguishable with respect to particular facts, Caramico involved the same inquiry as presented by this case, whether the activity of the governmental agency was "for a program or project undertaken by a Federal agency, or with Federal financial assistance."

*Alexander v. HUD, supra*, at 169. Thus, the Seventh Circuit seems to be holding that absent a voluntary acquisition and program which causes displacement, the tenants cannot meet the initial requisites of the written order clause.

This construction is more fully developed by the dissent in *Cole v. Harris*, 571 F. 2d 590 (D.C. Cir. 1977), *cert. granted*____U.S.____, 98 S. Ct. 3087 (1978). In *Cole*, a case strikingly similar to the instant case, the court held that the tenants were displaced persons within the meaning of the Relocation Act because they were ordered to vacate their apartments by HUD after HUD purchased the complex, and because the orders were issued in connection with HUD's demolition program. The dissent disagreed. Citing with approval HUD's argument that the written order clause was intended only to clarify that the acquisition clause included anticipated but not consummated acquisitions, the dissent states:

> ...HUD is contending that *even as to tenants who seek to qualify as "displaced persons" under the notice category* it is dispositive whether the *acquisition* was *for a project or program*, that is whether the acquisition was made as a voluntary and conscious choice.



*Id.*, at 607 (dissenting opinion). Later, the *Cole* dissent states:

> *This is the basic issue which separates my view from the views of my colleagues; whether the acquisition or the notice clause is involved, the acquisition or notice of proposed acquisition must be an "acquisition for a program or project." There can be no such acquisition if HUD's accession to title is involuntary.*

*Id.*, at 609 (dissenting opinion).

The plain language of the statute, together with the legislative history, refute the proposition that only voluntary acquisitions are covered by the Relocation Act. The statute states that where a person moves as a result of the "written order of the acquiring agency to vacate real property" for a program or project, such person is "displaced" within the meaning of the Act. Nothing in the statute speaks of voluntary or involuntary acquisitions and nothing even suggests an inquiry into the voluntariness of the acquisition. Congress could have said, quite simply, that a displaced person is one who "moves from real property...as the result of the conscious [or voluntary] acquisition of real property...for a program or project." However, the wisdom of its decision not to do so is readily apparent. First , Congress was concerned with the victims of government displacement, and it knew that the effects of displacement on individuals are the same regardless of the

government's state of mind in acquiring the property.[28] Additionally, Congress avoided forseeable administrative problems. For example how is the displaced person to know whether his property is being taken for "voluntary" or "involuntary" reasons?[29] What degree of voluntariness must be present?[30] Who is to determine the presence or degree of voluntariness and by what standards? These obvious problems, particularly when considered in light of Congress' intent that the Relocation Act be evenly and uniformly applied, demonstrate the foresight of Congress' decision not to insert voluntariness of acquisition as a

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[28] Where voluntariness might have been a focal concern, Congress focused instead upon victims. For example, very early in deliberations, emphasis was given to the situation of a family which lived adjacent to a town which was wholly acquired by the Army to build the Tuttle Creek Dam. The family was totally dependent upon the town for goods, services and basic subsistence and therefore had to move. The Army, however, neither needed nor acquired their property. The House Judiciary Committee reported favorably on a special bill to provide relief for the family, criticizing this inequity and urging government acquisition and assistance in such situations. The House focused upon this situation, fully and sympathetically explaining it in its *Study of Compensation*, Ch. X, Sec. B(2)(b)(12), pp. 124-126. It focused upon the inequity to the family displaced, and expressed no concern whatsoever that acquisition by the Army would be involuntary or unnecessary or an unanticipated consequence of a previous voluntary project. Simple justice required providing assistance to the displaced family.

[29] Congress was concerned, *inter alia*, with inverse condemnation situations such as where the flight path to and from a government airfield constitutes an avigation easement and where a flood control project condemns less land than is actually needed and waters invade other lands, thereby involuntarily condemning them. *Study of Compensation*, Ch. V, Sec. L, p. 85. Are these acquisitions "involuntary"?

[30] The government had indicated that Riverhouse acquisitions were "more voluntary" than the acquisition in *Cole*. *Harris v. Cole*, "Reply Memorandum for Petitioners" at p. 3. Such distinctions would create major administrative problems particularly where Congress provides neither a yardstick nor calipers.



criterion of eligibility. And this concept must not be engrafted onto the law at this juncture.

However, assuming *arguendo* that the Relocation Act applies only to displacements connected to voluntary acquisitions, the acquisition of Riverhouse satisfies this requirement. HUD purchased Riverhouse pursuant to Section 207(k) of the National Housing Act, 12 U.S.C. §1713(k), which empowers the Secretary, *inter alia*, to institute foreclosure proceedings against any defaulting mortgagor of a Section 221(d)(3) property and to purchase the property following foreclosure. But it does not require the Secretary to do so.

> *The Secretary at any sale under foreclosure may, in his discretion* . . . bid any sum up to but no in excess of the total unpaid indebtedness secured by the mortgage, plus taxes, insurance, foreclosure costs, fees, and other expenses, *and may become the purchaser of the property at such sale*. (emphasis added).

*Id.*[31]

Pursuant to its statutory authority, HUD accepted assignment of the Riverhouse mortgage in July, 1970. during the period 1970-1973, HUD decided to permit the owner to remain in default virtually without penalty, and to operate the project without interference by HUD. During this time, HUD could have brought suit to foreclose the mortgage, petitioned a court to be appointed mortgagee in possession, or asked for the appointment of a receiver to operate the property to prevent its further deterioration.[32] HUD chose none of these options. Finally, in May, 1973, HUD initiated foreclosure proceedings, after which it

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[31] Additionally, 12 U.S.C. §1713(g) permits the Secretary to accept assignment of a mortgage in default from the mortgagee in exchange for the mortgage insurance benefits.

[32] See, 12 U.S.C. §1713 *l*; 42 U.S.C. §3535; I.C. 34-1-12-1 *et seq.*

decided *voluntarily* to purchase the property at the Marshal's sale. No regulation or law required HUD to make this purchase.

Indeed, HUD has virtually acknowledged that it purchased Riverhouse voluntarily. Comparing the acquisition of Riverhouse to the acquisition of Sky Tower in *Cole*, the Government states:

> Since the Department had the option of refraining from foreclosure and continuing to suffer the mortgagor's default, the acquisition could be considered "voluntary" in the same sense that respondents [*Cole* tenants] contend the acquisition of Sky Tower was "voluntary." Indeed, since the Department acquired title to the project in *Alexander* through its own action rather than automatically in response to action by the mortgagee, the acquisition in *Alexander* could be said to be even more "voluntary" than the acquisition in...[*Cole*].

*Harris v. Cole*, "Reply Memorandum for Petitioners", p. 3.

## B. THE PURPOSES OF THE RELOCATION ACT ARE SUPPORTED BY APPLYING THE WRITTEN ORDER CLAUSE TO POST-ACQUISITION DISPLACEMENTS.

The central purposes of the Relocation Act are to provide uniform and equitable treatment of persons displaced by governmental action. In spite of the overwhelming evidence of this Congressional intent, and the broad interpretation which it urges, HUD would carve out a large exception to Relocation Act coverage, namely, those displacements which occur subsequent to government acquisition of real property. *See*, HUD *Brief in Opp. to Pet. for Cert.*, pp. 6-7. HUD argues that the written order clause applies *only* to anticipated, but unconsummated, acquisitions of property by the government, and not to



circumstances where the property is owned by the government. This conclusion cannot be supported.

The statute states that a person is displaced if he receives a "written order from the acquiring agency to vacate real property". The ordinary meaning of that phrase envisions a *command* that a resident move. Such a command can only come from the person or agency with legal authority to order property vacated, namely, the owner. A prospective owner might send a letter or otherwise give a "notice" to vacate, but he cannot given an *order* to vacate,within the ordinary meaning of that word. Thus, while it may be appropriate to interpret the written order clause to include instances where notices are issued in advance of acquisition, this interpretation cannot be used to destroy the plain meaning of the words chosen by Congress. Clearly, persons ordered to vacate are to be covered.

HUD's own regulations adopted pursuant to the Relocation Act recognize this. Those regulations define a displaced person to include, *inter alia*, one who is displaced as a result of:

> (1) The obtaining by the acquiring agency of title to or the right to possession of such real property for a project;
>
> (2) The written *order* of the acquiring agency to vacate such property for a project; *or*
>
> (3) The issuance by the acquiring agency of a written notice to the owner of its intent to acquire the real property for such project, in accordance with §42.136 ...(emphasis added)

24 C.F.R. §42.55(e). *Accord:* HUD *Relocation—Policies and Requirements Under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970*, 1371.1

(1975), Chap. 4, Sec. 1 para. 4(a), p. 4-4. Thus, HUD's regulations comport with our reading of the statute. A person is "displaced" within the meaning of the Relocation Act if he moves pursuant either to a written notice issued in anticipation of acquisition *or* to a written order to vacate property following acquisition, for a program or project.

Further, the legislative history does not lead to the conclusion currently argued by HUD. The definition of "displaced" in S.1 as it passed the Senate was amended by the House into the final language of "displaced person" in the Act. The Senate version read:

> §110. The term "displaced", when used in relation to any person, means any person moved or to be moved from real property on or after the effective date of this Act as a result of the acquisition or reasonable expectation of acquisition of such property for a public improvement constructed or developed by or with funds provided in whole or in part by the Federal Government.

The House deleted the "reasonable expectation" language and added the "written order" clause. The only sentence of the House Report which addresses this change states:

> If a person moves as the result of such notice to vacate, it makes no difference whether or not real property actually is acquired.

This suggests that *one* circumstance in which the written order clause applies is where an agency notifies a resident to vacate prior to acquisition. But this is only one possible circumstance among several that would fall within the plain meaning of the added clause. Another situation might be that raised by Rep. Mink where previously acquired surplus Navy property was to be sold and the residents ordered to vacate prior to sale.[33] Such a situation envisions a

[33] House Hearings On S.1, pp. 104-105 (Remarks of Rep. Mink)



sale with no acquisition and only an order to vacate. Another example is where the National Forest Service acquires property through gift or by purchase, and then leases it for a period of time. Later it identifes a specific use for it, cancels the leases, and orders the residents to vacate the land. [34] Again, there would be no acquisition which causes displacement and only an order to vacate.

Other potential examples are numerous. For example, the government may acquire an occupied building for project which is later abandoned. Years later, it decides to use the property as part of a highway and evicts the occupants. Under the analysis set forth by the court below and by HUD, the occupants receive no assistance since the government already owns their homes, whereas all other persons required to move for the highway receive benefits. Additionally, there is the example of a private owner who agrees to convert an apartment building into an office building for lease to the government. In connection with that project, he orders the residents to vacate. Persons are displaced, but no acquisition occurs. The displacees in each of these examples can only be eligible for statutory benefits if they are covered by the written order clause. That they were intended to be covered is evident from the House Report. It cites the situation where the Post Office Department assigns an option to purchase land to the highest bidder, who in turn exercises the option, builds a post office, and leases it to the Department. This, the Report concludes, satisfies the definition of displaced person despite the fact that the property is never acquired by the federal government and the acquisition occurs without federal dollars; and persons displaced for that project are

[34] Hearings Before the Select Subcomm. on Real Property Acquisition of the House Comm. on Public Works, 88th Cong., 2d Sess. (1963), pp. 158-164.

entitled to Relocation Act benefits. As the House Report emphatically warns:

> It makes no difference to a person required to move because of the development of a postal facility which method the postal authorities use to obtain the facility, or who acquires the site or holds the fee title to the property. *Since the end product is the same*, a facility which serves the public and is regarded by the public as a public building, *any person so required to move is a displaced person entitled to the benefits of this legislation*. (emphasis added)

H.R. Rep. No. 1656, 91st Cong., 2d Sess., p. 4 Not coincidentally, the House gives this warning at the precise moment that it decided to alter the statute with the words which HUD would now so parsimoniously construe.

The Riverhouse tenants meet the requirements of the written order clause. Many of them resided in Riverhouse for long periods of time prior to HUD's acquisition and others moved in after acquisition entering into leases directly with HUD. Following acquisition, all remained in their apartments while HUD evaluated the future of Riverhouse. Finally, in November, 1974, HUD determined to vacate the buildings, and in so doing, issued the tenants orders to vacate to make way for its Property Disposition Program, a federal program benefitting the public as a whole.[35] Consistent with Congress' intention that the victims of government caused displacement be covered by the Relocation Act, and consistent with the plain language found in the definition of displaced person, the tenants satisfy the initial requisites of the written order clause.

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[35] The nature of the program and the public benefits flowing therefrom are developed *infra* at p. 34-35.



## C. THE TENANTS WERE ORDERED FROM RIVERHOUSE IN CONNECTION WITH HUD'S PROPERTY DISPOSITION PROGRAM, WHICH PROGRAM WAS DISTINCT FROM THE TERMINATED SECTION 221(d)(3) PROGRAM.

The court of appeals acknowledged that neither the text of the Relocation Act nor its legislative history define the terms "program or project". *Alexander v. HUD, supra*, at 169. That language, however, should be read as it is commonly understood. *Burns v. Alcala, supra*, at 580; *Banks v. Chicago Grain Trimmers*, 390 U.S. 459 (1968); *NLRB v. Highland Park Mfg. Co.*, 341 U.S. 322, 324 (1951). The common understanding of "program" is "an outline of work to be done, a prearranged plan of procedure:" and a "project" is "a scheme; a design; a proposal of something intended or devised; an undertaking, as a unit of work done by one of the various governmental agencies." *Webster's New Twentieth Century Dictionary* (2d ed. 1975). Given the common meaning of these words, HUD's Property Disposition Program qualifies as a "progam" within the meaning of the Relocation Act.

Section 207*l* of the National Housing Act, 12 U.S.C. §1713(*l*) grants HUD wide discretion in the acquisition and disposition of multi-family properties insured and subsidized under other provisions of that Act. It permits the Secretary *inter alia*, to "complete, reconstruct, rent, renovate, modernize, insure, make contracts for the management of..., or sell for cash or credit or lease in his discretion, any property acquired by him under this section...." Pursuant to that authority, HUD developed its *Handbook* which sets forth HUD policies and procedures to be followed upon acquisition of such properties. The *Handbook* states, as its general policy, the primary objective:

> . . . to dispose of all acquired multifamily properties at the earliest possible date at the highest price obtainable in the current market. To accomplish this, a *program* for operation, including repairs and/or rehabilitation, shall be determined, whenever possible, prior to acquisition to be approved and initiated as promptly as possible after acquisition. The *program*, determined by the highest and best use of the project, will be formulated and implemented with a view toward leasing the property in a condition to obtain the highest occupancy ratio at maximum rental rates so as to provide the greatest possible return on the Secretary's investment. (emphasis added)

*Id.*, Chap. 2, p. 3.

Most importantly, the *Handbook* acknowledges that the acquisition of property signals a "new phase of operation" where HUD's status shifts from insurer (here mortgagee) to owner, and as owner it becomes intimitately involved in the operation of the project and assumes responsibility for the well-being of the residents.[36] In minute detail, the *Handbook* provides the procedures to be undertaken prior to acquisition[37] and during HUD's ownership,[38] as well as setting forth the method of property disposition. For example, the *Handbook* requires the local HUD office to determine the highest and best use of the project (in the "First Narrative Report"), taking into consideration such factors as the design, utility and facilities of the project; the location and accessibility of transportation, schools, shopping, churches, and medical facilities; and the need for the particular type of housing and on-site facilities in the local area.[39] The local office is instructed to determine the

[36] *Handbook*, Chap. 3, Sec. 1, p. 7.
[37] *Id.* Chap. 3, pp. 7-15.
[38] *Id.*, Chap. 4, pp. 27-42. Chap. 6, 7 pp. 57-72.
[39] *Id.*, Chap. 3, Sec. 1, p. 7.



needs for continued operation and overall management of the property during ownership by the Secretary,[40] and is to proceed with the retention of a qualified management agent to operate the property.[41] The management agent, in turn, is to evaluate the needed repairs and to request funds to complete them;[42] additionally, the agent is to advertise the availability of units for rental and enter into new leases with existing and new lessees.[43] Further, during the "Program for Property Operation"[44] the local office is instructed to develop a property disposition program for sales offerings.[45] The sale can be made to a private party or a local housing authority,[46] and can be made with new interest and insurance subsidies[47] in connection with sale for a cooperative, condominium, or conventional housing project.[48] All of this is to be accomplished "without undue disruption to occupants"[49] and with the public purpose of obtaining the highest return from the property.[50]

At the time of acquisition of Riverhouse Towers Apartments, HUD embarked upon its Property Disposition Program in accordance with the *Handbook*. It began to evaluate the highest and best use of the property, hired a management agent, entered into new leases and made some repairs to the property. Shortly after acquisition, HUD determined that it was in the best

[40] *Id.*, Chap. 3, Sec. 3, p. 14.
[41] *Id.*, Chap. 5, pp. 43-56.
[42] *Id.*, Chap. 7, Sec. 2, p. 63; Chap. 10, pp. 95-100.
[43] *Id.*, Chap. 8, Sec. 2, pp. 73-78.
[44] *Id.*, Chap. 7, pp. 63-72.
[45] *Id.*, Chap. 12, pp. 103-115.
[46] *Id.*, Chap. 2, Sec. 2, p. 6-1; Chap. 13, Sec. 1, p. 118.
[47] *Id.*, Chap. 12, Sec. 6, pp. 115-117.
[48] *Id.*, Chap. 12, Sec. 5, 6, pp. 109-115.
[49] *Id.*, Chap. 3, Sec. 3, p. 14.
[50] *Id.*, Chap. 3, Sec. 1, p. 7.

interest of the government to close Riverhouse until it could sell the property.[51] However, it refused to disclose its actual plans with respect to disposition, although it did state that such plans would be submitted after all tenant litigation was resolved.[52] By the time this litigation reached the court of appeals, HUD's plans still remained undisclosed, but HUD announced a new property disposition program found in 24 C.F.R. Part 290.

It is instructive to focus upon these new program requirements. In part they expand prior disposition program considerations; in large part they merely elaborate upon prior considerations and assumptions. But they are particularly instructive because they emphasize the fact that the disposition program is a program unto itself—not just a minimal plan, but a complex plan to be developed by thorough analyses of multiple factors and to accomplish significant public purposes.

The Disposition Program establishes two general public purposes:

> (a) To reduce the inventory of HUD-owned projects in such a manner as to ensure the maximum return to the mortgage insurance funds consistent with the need to preserve and maintain urban residential areas and communities, and to protect the financial interests of the government by obtaining a satisfactory return based on the project's present market value and anticipated future use.
>
> (b) To maintain through a rent subsidy, or otherwise, rents at levels low-to-moderate income families can afford, if the project was intended to serve low-to-moderate income groups.

---

[51] *See* HUD's "First Narrative Report," at pp. A44-A47.
[52] *Id.*



24 C.F.R. Part 290.10. In furtherance of these objectives, upon acquisition, HUD is required to consider the feasibility of disposing of the project "with a rental subsidy *program*" by looking to such factors as:

> (1) Whether or not rental subsidy funds can be made available to the project after disposition of the project.
>
> (2) The eligibility for HUD rental subsidy of each eligible tenant in occupancy at acquisition, based upon income recertification.
>
> (3) The availability of comparable (subsidized and unsubsidized) housing or housing assistance programs in the general area.
>
> (4) The feasibility of making available to the eligible tenants comparable (subsidized or unsubsidized) housing or obtaining housing assistance for them.
>
> (5) The availability of rental counseling.

24 C.F.R. Part 290.20. After considering these factors, the regulations require HUD to prepare a disposition recommendation (24 C.F.R. Part 290.30) which includes a physical and financial analysis of the project, an inquiry into the possibilities of transforming the project into a condominium or cooperative, an evaluation of the appropriateness for use of the project as low- to moderate-income housing, and a consideration of whether to demolish the project. Finally, the regulations require HUD to submit a "Final Disposition Program." 24 C.F.R. Part 290.40.

The Property Disposition Program was and is a "program" within the common meaning of that term. The program consisted of the preparation and implementation of a prearranged plan of procedure aimed at fulfiling specific public purposes. It required HUD to make difficult

social and economic analyses of the Riverhouse project. It forced a decision on whether to continue to operate the property in accordance with the purposes for which it was constructed, or to abandon those purposes. It involved determining whether or not to rehabilitate the property either for sale or for retention by HUD for lease. And it set forth the method and options for sale once the decision to sell was made.

Moreover, the Property Disposition Program was and is a program designed to provide benefits to the public as a whole. Section 207*l* of the National Housing Act, 12 U.S.C. §1713*l*, the underlying authority for the Property Disposition Program, grants HUD wide latitude to rehabilitate and operate multifamily projects such as Riverhouse, so as to achieve the express national policy of realizing "as soon as feasible...the goal of a decent home and a suitable living environment for every American family." 42 U.S.C. §§1441, 1441a; 12 U.S.C. §1201t. At the same time, Section 207 *l* permits the Secretary of HUD to sell property and to return the proceeds from the sale to the General Insurance Fund for reinvestment in other housing programs and projects.

The *Handbook* treats the latter option as the primary objective to be achieved when HUD acquires property. *Handbook*, Chap. 2, p. 5. However suspect this objective may be,[53] it is clear that the public obtains substantial

[53] It is questionable whether that purpose alone comported with the mandate of the National Housing Act, 42 U.S.C. §1441a which requires HUD to exercise its powers consistently with the national housing policy to provide decent, safe and sanitary housing to persons of low to moderate income. *See also, S. Rep. No. 84, 81st Cong., 1st Sess. (1949), printed in* 1949 U.S. Code Cong. & Adm. News, 1550, 1559; *Commonwealth of Pennsylvania v. Lynn*, 501 F. 2d 848 (D.C. Cir. 1974); *Cole v. Harris*, 389 F. Supp. 99 (D.D.C. 1976) *aff'd on other grounds* 571 F. 2d 590 (D.C. Cir. 1977), *cert granted*, ____U.S.____, 98 S. Ct. 3087 (1978).



benefits through its implementation—protection and expansion of the insurance fund and reinvestment in other housing programs designed for the benefit of the public as a whole. Hence, even under the Property Disposition Program in operation when HUD acquired Riverhouse and ordered the tenants to move, the public obtained substantial benefits to the injury of those displaced.[54] Consequently, it was error for the court of appeals to conclude that the tenants were not entitled to Relocation Act benefits because their displacement was not connected to a "program...undertaken by a federal agency to accomplish an objective benefitting the public as a whole." *Alexander v. HUD, supra* at 170.

[54] The new Property Disposition Program, 24 C.F.R. Part 290 under which Riverhouse was sold, even more dramatically demonstrates the benefits which accrue to the public once HUD obtains ownership of the property. That program pursues the public policy of providing decent housing and a suitable living environment for all Americans in accordance with 42 U.S.C. §1441a; and because of that program, HUD may no longer dispose of property without consideration for the policies underlying the National Housing Act. Rather, it must exercise its powers with the express purpose of preserving housing for low to moderate income persons at rents which they can afford, while at the same time protecting the financial interests of the government.

## CONCLUSION

The court of appeals' decision must be reversed, for it construed narrowly what Congress intended to be an expansive, humanitarian and remedial statute demanding broad application. It carved out an exception to the statute which is justified neither by the language of the Act, nor by its legislative history, nor by its comprehensive and uniform purpose. Most unfortunately, it permits the very agency which is charged under law to ensure that American citizens are decently housed to close housing while callously ignoring its corollary responsibility to ensure that decent, safe and sanitary replacement housing is available for the displaced residents.

Respectfully submitted,

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## ADDENDUM

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

OFFICE OF GENERAL COUNSEL IN REPLY REFER TO:

4 SEP 1978

Richard L. Zweig, Esquire
Legal Services Organization of Indiana, Inc.
Investors Trust Building—Suite 390
107 North Pennsylvania Street
Indianapolis, Indiana 46204

Dear Mr. Zweig:

Subject: *Alexander* v. *Department of Housing and Urban Development*, S. Ct. No. 77-874

In response to your inquiry concerning Riverhouse Towers Apartments, we have confirmed the following:

1. This Department advertised the sale of Riverhouse Towers Apartments on May 6, 1977 and held a bid opening on June 8, 1977.
2. On July 13, 1977, the Department entered into a contract of sale with a private party for the sale of Riverhouse Towers Apartments.
3. Following the execution of the contract of sale the Department again evaluated the disposition of Riverhouse Towers Apartments to assure compliance with property disposition regulations which had been adopted on January 27, 1977, 24 C.F.R. Part 290 (rev. April 1, 1977).

4. That evaluation produced a recommendation that the sale of Riverhouse Towers Apartment to the private party proceed, and the sale was consummated on January 30, 1978.

Sincerely,

(signed) James G. Choulas

for

Arthur J. Gang
Associate General Counsel
for Litigation

No. 77-874

# In the Supreme Court of the United States

OCTOBER TERM, 1977

---

GENANETT ALEXANDER, ET AL., PETITIONERS

*v.*

PATRICIA ROBERTS HARRIS, SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL.

---

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

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## BRIEF FOR THE RESPONDENTS

---

WADE H. MCCREE, JR.,
*Solicitor General,*
*Department of Justice,*
*Washington, D.C. 20530.*

# In the Supreme Court of the United States

OCTOBER TERM, 1977

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No. 77-874

GENANETT ALEXANDER, ET AL., PETITIONERS

*v.*

PATRICIA ROBERTS HARRIS, SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL.

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

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## BRIEF FOR THE RESPONDENTS

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### OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A6-A16) is reported at 555 F. 2d 166. The opinion of the district court (Pet. App. A1-A5) is unreported.

### JURISDICTION

The judgment of the court of appeals was entered on May 20, 1977. A petition for rehearing was denied on September 19, 1977 (Pet. App. A17-A18). The petition for a writ of certiorari was filed on December 16, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTION PRESENTED

Whether tenants who are ordered to vacate a deteriorating housing project that has been conveyed to the Department of Housing and Urban Development after a default by the sponsor are "displaced persons" entitled to relocation benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act.

## STATEMENT

Petitioners are former tenants of a low-income housing development in Indianapolis. The development had been constructed and owned by a private nonprofit corporation whose mortgage was insured by the Department of Housing and Urban Development pursuant to Section 221(d)(3) of the National Housing Act, as added, 68 Stat. 601, and amended, 12 U.S.C. 1715*l*(d)(3). The owner went into default on the loan in 1970, and the mortgage was assigned to the Department, in accordance with the mortgage insurance agreement. After a period of continuing default by the owner, the Department initiated foreclosure proceedings and eventually acquired title to the development (Pet. App. A6-A7).

For a short time thereafter, the Department attempted to continue running the development and to secure needed repairs. But in the light of excessive operational costs and irreversible deterioration in the condition of the premises, the Department ultimately determined that the project would have to be closed. Accordingly, the Department had notices to quit served on all the tenants (Pet. App. A7).

Petitioners then brought this action in district court, claiming that they were entitled to relocation benefits under the Uniform Relocation Assistance and Real



Property Acquisition Policies Act of 1970, 84 Stat. 1894, 42 U.S.C. 4601 *et seq.* (Relocation Act).[1] The district court denied relief, holding that the Relocation Act did not apply to the Department's termination of the housing development (Pet. App. A1-A5). The court of appeals affirmed (Pet. App. A6-A16).

## DISCUSSION

This case presents the question whether tenants are entitled to benefits under the Relocation Act when they are required to vacate a housing development that was acquired by the Department of Housing and Urban Development pursuant to a mortgage insurance agreement as the result of a default. This question has now been addressed by four courts of appeals. Three of those courts—the Second Circuit in *Caramico* v. *Secretary of Housing and Urban Development*, 509 F. 2d 694; the Eighth Circuit in *Harris* v. *Lynn*, 555 F. 2d 1357, affirming 411 F. Supp. 692 (E.D. Mo.), certiorari denied, October 31, 1977 (No. 77-5233); and the Seventh Circuit in this case—have held that the Act does not apply to the Department's terminations of acquired projects. On November 14, 1977, however, the Court of Appeals for the District of Columbia Circuit held, one judge dissenting, that tenants ordered to vacate a housing development in such circumstances were entitled to full benefits under the Relocation Act. *Cole* v. *Harris*, Nos. 75-2268 and 75-2269, decided November 14, 1977. The government has decided to file a petition for a writ of certiorari in *Cole* v. *Harris*.[2] Because the cases present

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[1]Certain of the petitioners also sought return of their security deposits, which were withheld for nonpayment of rent. That claim was denied in the district court and the court of appeals (Pet. App. A13-A16), and petitioners have not renewed it here.

[2]On February 3, 1978, Mr. Justice Brennan extended the time for the filing of a petition for a writ of certiorari in *Cole* v. *Harris* to April 13, 1978.

the same issue, we suggest that the Court hold the petition in the present case so that it may be considered together with the petition we will file in *Cole*. Since there is now a conflict among the circuits on this important issue, we do not oppose the granting of the petition in this case along with the petition we will file in *Cole*.

While reserving fuller discussion for our petition in *Cole*, we will briefly note here the nature of the issue presented by the two cases, the reasons why we believe the court of appeals decision in this case to be correct and the decision in *Cole* erroneous, and the reasons why the issue is significant enough, given the conflict among the circuits, to warrant review by this Court.

1. The Relocation Act provides a variety of benefits for individuals who fit the statutory standards for eligibility. Under specified circumstances the Act provides "moving and related expenses," 42 U.S.C. 4622; "replacement housing" payments of up to $15,000 for homeowners and $4000 for tenants, 42 U.S.C. 4623, 4624; and "relocation assistance advisory services," 42 U.S.C. 4625. The definition of "displaced person," on which eligibility for many of these benefits turns, is contained in Section 101(6) of the Act, 42 U.S.C. 4601(6), which provides in relevant part:

> The term "displaced person" means any person who * * * moves from real property * * * as a result of the acquisition of such real property, * * * or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency * * *.

The definition contains two clauses: the "acquisition clause," which reaches those who move as a result of an actual acquisition of property for a program or project



undertaken by a federal agency, and the "written order clause," which provides benefits for those who move as the result of a written order by the acquiring agency, even in the absence of an actual acquisition. The principal issue presented by this case and by *Cole* v. *Harris* is whether the written order clause applies only to tenants who are directed to vacate in connection with an acquisition or proposed acquisition of property, or whether that clause extends the benefits of the Relocation Act to all tenants who are ordered to vacate property previously acquired by a federal agency. A second, related issue involves the meaning of the phrase, "program or project undertaken by a Federal agency," with which the acquisition or the written order must be associated.

In this case, the Seventh Circuit adopted the narrower interpretation of the written order clause. The court held that the definition of displaced persons is limited to "persons displaced by governmental activities involving the acquisition of land to accomplish an objective benefiting the public or fulfilling a public need" (Pet. App. A12). The court further ruled, on the second issue, that the Department's action in ordering petitioners to vacate the project was not part of a "program or project undertaken by a federal agency to accomplish an objective benefiting the public as a whole" (Pet. App. A12). The Courts of Appeals for the Second and Eighth Circuits have reached the same result on generally similar facts. *Caramico* v. *Secretary of Housing and Urban Development, supra; Harris* v. *Lynn, supra.*

The Court of Appeals for the District of Columbia Circuit in *Cole* v. *Harris, supra,* adopted the broader interpretation of the written order clause. The court acknowledged that Congress had apparently focused only on persons displaced by acquisitions or proposed

acquisitions of property. Nonetheless, the court approved the award of benefits to tenants who were not displaced by an acquisition or proposed acquisition on the basis that, "if Congress had explicitly considered the problem of persons ordered to vacate government property for a program or project, it would have approved an interpretation of the Act making benefits available for such persons." *Cole* v. *Harris, supra,* slip op. 16.

2. Although the court in *Cole* v. *Harris* considered the "plain meaning" of the statute to support its view, we do not find the matter so clear. The written order clause speaks of a "written order of the acquiring agency." While the court in *Cole* v. *Harris* construed the words "acquiring agency" to mean an agency that has acquired the property in question at some time in the past, it is at least equally plausible that Congress used the words to mean an agency that is engaged in or proposing to engage in an acquisition.

The legislative history indicates that the written order clause was intended to provide a minor supplement to the coverage of the acquisition clause, not to expand the scope of the statute beyond the context of acquisitions of property. The initial version of the written order clause appeared in the Senate bill, where a "displaced person" was defined as a person forced to move from property "as a result of the acquisition *or reasonable expectation of acquisition*" of the property by a federal or state agency (emphasis added). S. 1, 91st Cong., 1st Sess. 105(1) - (5) (1969), 115 Cong. Rec. 31372 (1969). In the House Public Works Committee, the language of the definition was changed to its present form, which requires that the tenant be actually ordered to move in anticipation of an acquisition, instead of being eligible for benefits simply on the basis of his expectation than an acquisition would



occur. See S. 1, 91st Cong., 2d Sess. 1(6) (1970), 116 Cong. Rec. 40163 (1970). As the House Report noted: "[i]f a person moves as the result of such a notice to vacate, it makes no difference whether or not the real property actually is acquired." H.R. Rep. No. 1656, 91st Cong., 2d Sess. 4 (1970).

When the bill returned to the Senate, the only reference to the change in the definition of "displaced person" appeared in a memorandum on "points of significant concern" submitted by Senator Percy on behalf of the Administration. 116 Cong. Rec. 42139 (1970). The memorandum read, in relevant part:

> *Definition of displaced person.* The House bill would limit the status of displaced person to those who move as the result of the acquisition of, or written notice to vacate, real property. The Senate version would provide a broader definition which includes those who move as the result of acquisition or reasonable expectation of acquisition.

Consistent with the House Report, this memorandum reflected an understanding that the House bill narrowed the scope of the Senate language. The House prevailed, and the narrower language put forward by the House became the written order clause in Section 101(6) of the Act.

Thus it would appear, as Judge Wilkey concluded in his dissent in *Cole* v. *Harris,* that the House Committee's language *"limited* the definition, and certainly did *not vastly expand it by covering* all persons displaced with notice from property *already owned"* by a federal agency (slip op. 22 (Wilkey, J., dissenting), emphasis in original).

3. We agree with petitioners that the issue presented here and in *Harris* v. *Cole* is of substantial and continuing importance. As petitioners have noted, the Department of

Housing and Urban Development has been required, under mortgage insurance contract agreements, to take title to a large number of housing developments, and the Department anticipates that this necessity will continue. Resolution of the question whether the Relocation Act applies to orders to vacate issued by the Department following its involuntary acquisition of such properties is essential to enable the Department to weigh the human and material costs of demolishing a failing project rather than allowing it to continue deteriorating. Moreover, since the Relocation Act applies to all federal agencies and to state agencies receiving federal assistance, the issue presented has significance for all such agencies that own property on which tenants reside.

## CONCLUSION

For the foregoing reasons, we suggest that the present petition for certiorari be held so that it may be considered together with the government's forthcoming petition for a writ of certiorari in *Cole* v. *Harris*; assuming that the petition in *Cole* v. *Harris* is granted, we do not oppose the granting of the petition in this case.

Respectfully submitted.

WADE H. MCCREE, JR.,
*Solicitor General.*

MARCH 1978.

Nos. 77-874 and 77-1463

# In the Supreme Court of the United States

OCTOBER TERM, 1978

GENANETT ALEXANDER, ET AL., PETITIONERS

*v.*

PATRICIA ROBERTS HARRIS, SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL.

PATRICIA ROBERTS HARRIS, SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL., PETITIONERS

*v.*

SADIE E. COLE, ET AL.

*ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE SEVENTH CIRCUIT AND THE DISTRICT OF COLUMBIA CIRCUIT*

## BRIEF FOR THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL.

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# In the Supreme Court of the United States

OCTOBER TERM, 1978

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No. 77-874

GENANETT ALEXANDER, ET AL., PETITIONERS

*v.*

PATRICIA ROBERTS HARRIS, SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL.

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No. 77-1463

PATRICIA ROBERTS HARRIS, SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ET AL., PETITIONERS

*v.*

SADIE E. COLE, ET AL.

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*ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE SEVENTH CIRCUIT AND THE DISTRICT OF COLUMBIA CIRCUIT*

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## BRIEF FOR THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT, ET AL.

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### OPINIONS BELOW

The opinion of the court of appeals in No. 77-874 (77-874 Pet. App. A-6 to A-16) is reported at 555

F.2d 166. The opinion of the district court in No. 77-874 (77-874 Pet. App. A-1 to A-5) is unreported.

The opinion of the court of appeals in No. 77-1463 (77-1463 Pet. App. 1-A to 49-A) is reported at 571 F.2d 590. The opinion of the district court in No. 77-1463 (77-1463 Pet. App. 52A-54A) is unreported. Two prior opinions of the district court are reported at 389 F. Supp. 99 and 396 F. Supp. 1235.

## JURISDICTION

The judgment of the court of appeals in No. 77-874 was entered on May 20, 1977. A petition for rehearing was denied on September 19, 1977 (77-874 Pet. App. A-17 to A-18). The petition for a writ of certiorari was filed on December 16, 1977, and was granted on June 19, 1978. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

The judgment of the court of appeals in No. 77-1463 (77-1463 Pet. App. 50A-51-A) was entered on November 14, 1977. On February 3, 1978, Mr. Justice Brennan extended the time within which to file a petition for a writ of certiorari to and including April 13, 1978. The petition was filed on that date and was granted on June 19, 1978. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

## QUESTION PRESENTED

Whether tenants who are ordered to vacate a housing project that has been conveyed to the Department of Housing and Urban Development after default by the project's sponsor are "displaced persons" entitled to relocation benefits under the Uniform Relocation



Assistance and Real Property Acquisition Policies Act of 1970, where the order to vacate is unrelated to the Department's acquisition of the property.

## STATUTE INVOLVED

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 *et seq.*, provides in pertinent part:

> Section 4601. Definitions.
>
> As used in this chapter —
>
> * * * * *
>
> (6) The term "displaced person" means any person who, on or after January 2, 1971, moves from real property, or moves his personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; * * *.
>
> * * * * *
>
> Section 4621. Declaration of policy.
>
> The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.
>
> Section 4622. Moving and related expenses.
>
> (a) General provision.
>
> Whenever the acquisition of real property for a program or project undertaken by a

Federal agency in any State will result in the displacement of any person on or after January 2, 1971, the head of such agency shall make a payment to any displaced person, upon proper application as approved by such agency head, for—

(1) actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;

(2) actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the head of the agency; and

(3) actual reasonable expenses in searching for a replacement business or farm.

(b) Displacement from dwelling; election of payments; moving expense and dislocation allowance.

Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive a moving expense allowance, determined according to a schedule established by the head of the Federal agency, not to exceed $300; and a dislocation allowance of $200.

* * * * *



Section 4624. Replacement housing for tenants and certain others.

In addition to amounts otherwise authorized by this subchapter, the head of the Federal agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under section 4623 of this title[1] which dwelling was actually and lawfully occupied by such displaced person for not less than ninety days prior to the initiation of negotiations for acquisition of such dwelling. Such payment shall be either—

(1) the amount necessary to enable such displaced person to lease or rent for a period not to exceed four years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to his place of employment, but not to exceed $4,000, or,

(2) the amount necessary to enable such person to make a downpayment (including incidental expenses described in section 4623(a)(1)(C) of this title) on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to

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[1] Section 4623 deals with "Replacement housing for homeowner[s] * * *."

public utilities and public and commercial facilities, but not to exceed $4,000, except that if such amount exceeds $2,000, such person must equally match any such amount in excess of $2,000, in making the downpayment.

Section 4625. Relocation assistance advisory services.

(a) Program for displaced persons and economically injured occupants of adjacent property.

Whenever the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person on or after January 2, 1971, the head of such agency shall provide a relocation assistance advisory program for displaced persons which shall offer the services described in subsection (c) of this section. If such agency head determines that any person occupying property immediately adjacent to the real property acquired is caused substantial economic injury because of the acquisition, he may offer such person relocation advisory services under such program.

* * * * *

(c) Measures, facilities, or services; description.

Each relocation assistance advisory program required by subsection (a) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to—



(1) determine the need, if any, of displaced persons, for relocation assistance;

(2) provide current and continuing information on the availability, prices, and rentals, of comparable decent, safe, and sanitary sales and rental housing, and of comparable commercial properties and locations for displaced businesses;

(3) assure that, within a reasonable period of time, prior to displacement there will be available in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, as defined by such Federal agency head, equal in number to the number of and available to such displaced persons who require such dwellings and reasonably accessible to their places of employment, except that the head of that Federal agency may prescribe by regulation situations when such assurances may be waived;

(4) assist a displaced person from his business or farm operation in obtaining and becoming established in a suitable replacement location;

(5) supply information concerning Federal and State housing programs, disaster loan programs, and other Federal or State programs offering assistance to displaced persons; and

(6) provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation.

## STATEMENT

1. ***Alexander*** **(No. 77-874).**

Petitioners in No. 77-874 are former tenants of the Riverhouse Towers Apartments, a low-income housing project in Indianapolis, Indiana. The project was constructed in the late 1960's by Riverhouse Apartments, Inc., a private nonprofit corporation (A. 19, 27). The corporation had secured financing for the project through a mortgage insured and subsidized by the Department of Housing and Urban Development pursuant to Section 221(d)(3) of the National Housing Act, 12 U.S.C. 1715*l* (d)(3). The mortgage insurance agreement provided that if Riverhouse Apartments, Inc., defaulted on the loan, the mortgagee could recover the full balance of the loan from the Department in exchange for a transfer of the mortgage on the project to the Department (77-874 Pet. App. A-2, A-6 to A-7).

In 1970 the corporation fell into default on the loan, and the mortgagee assigned the mortgage to the Department in exchange for payment of the mortgage insurance benefits. In May 1973, after continuing default by Riverhouse Apartments, Inc., the Department initiated foreclosure proceedings. During the pendency of those proceedings, the project was operated by a court-appointed receiver. On



June 6, 1974, a decree of foreclosure was entered, and on August 13, 1974, the Department purchased the property at the foreclosure sale (77-874 Pet. App. A-2, A-7; A. 20, 27-28).

After the acquisition, the Department attempted to continue operating the project. It hired a management agent and through the agent sought to make needed repairs on the property. The Department then concluded, however, that because of concern for the safety of the residents and the drastic deterioration in the condition of the premises, the project would have to be closed. Accordingly, in November 1974 the Department had notices to quit served on all the remaining tenants (77-874 Pet. App. A-2 to A-3, A-7; A. 28, 43-46).

Petitioners then brought this action in the United States District Court for the Southern District of Indiana, claiming that they were entitled to relocation benefits under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 *et seq.* (Relocation Act).[2] The district court denied relief, holding that the Relocation Act did not apply to the Department's termination of the housing project (77-874 Pet. App. A-1 to A-5). According to the district court, the "termination of the present use of Riverhouse Tower Apart-

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[2] Certain of the petitioners also sought return of their security deposits, which had been withheld for nonpayment of rent. That claim was denied in the district court and the court of appeals (77-874 Pet. App. A-5, A-13 to A-16), and the petitioners have not renewed it here.

ments is not a 'program or project undertaken by a federal agency' " as that phrase is used in the Relocation Act, and petitioners therefore "are not entitled to relocation assistance and payments" under the Act (*id.* at A-4).

The court of appeals affirmed (*id.* at A-6 to A-16). The court noted that the Relocation Act had been passed in an effort "to provide uniform treatment for those forced to relocate as a result of federal and federally aided public improvement programs" (*id.* at A-9). In order for benefits to be available under the Relocation Act, the court observed, the person seeking the benefits must have been displaced "for a program or project undertaken by a Federal agency, or with Federal financial assistance" (42 U.S.C. 4601(6)). In this case, the court held, the Department's order to the tenants of Riverhouse to vacate the project was not for such a program or project (77-874 Pet. App. A-11). In the court's view, persons displaced by "programs" and "projects" within the meaning of the Relocation Act "are persons displaced by governmental activities involving the acquisition of land to accomplish an objective benefiting the public or fulfilling a public need" (*id.* at A-12). The Department's order to vacate Riverhouse Towers could not be considered part of a "program or project" within the contemplation of the Relocation Act because the decision to abandon the project represented only a "sad recognition that the Riverhouse Project failed to accomplish the government's objective of providing adequate



public housing for the needy" (*id.* at A-12). The court added that a decision to terminate a project could not itself be deemed a "program" or "project" in the absence of "some indication that the decision to terminate and the order to vacate constitute a prelude to some governmental undertaking amounting to a program designed for the benefit of the public as a whole" (*id.* at A-13).

**2. *Cole* (No. 77-1463).**

The Sky Tower apartment complex in the Anacostia section of Washington, D.C., was built in the 1950's. The 19 buildings in the complex contained 217 small "garden" apartments. In 1970, a nonprofit corporation purchased Sky Tower and attempted to rehabilitate the complex by converting the units into larger apartments intended for low- and moderate-income families. The Department of Housing and Urban Development provided assistance to the corporation and the tenants by insuring the mortgage on the complex, subsidizing the mortgage interest payments, and paying rent supplements for a number of the households (77-1463 Pet. App. 2-A to 3-A).

In spite of this assistance, the rehabilitation effort failed. After the original general contractor defaulted on performance of the rehabilitation work, the Department took the unusual step of permitting an increase in the amount of the insured mortgage, along with a substitution of contractors. But the second contractor also abandoned work and, in addition, placed a lien on the property, whereupon the

mortgagee declared the nonprofit owner in default and foreclosed (77-1463 Pet. App. 3-A). The mortgagee, exercising its rights under the mortgage insurance contract, then conveyed title to the project to the Department in exchange for the statutory mortgage insurance benefits. The Department took title in June 1973 (77-1463 Pet. App. 3-A).

The Department hired a management firm to operate the project and executed new month-to-month leases with the tenants on the same terms as their previous leases. By September 1974, however, the Department concluded that in view of the deteriorated condition of the project, further efforts at rehabilitation would be futile. Department officials decided that the project should be demolished and the land sold to developers for the construction of single-family homes in accordance with the master plan of the District of Columbia government (77-1463 Pet. App. 3-A, 11-A). Accordingly, in September 1974 the Department had the management firm give notice to the 72 families remaining in Sky Tower to vacate their apartments. Tenants who were current in their rent were granted $300 for moving expenses and were exempted from payment of their last month's rent (77-1463 Pet. App. 3-A to 4-A).

Respondents, a group of Sky Tower tenants, then brought this action in the United States District Court for the District of Columbia, challenging the Department's decision to raze Sky Tower rather than rehabilitate it and seeking injunctive relief and damages. One of their claims was that the Department



had failed to provide them with benefits under the Relocation Act (77-1463 Pet. App. 4-A).

The district court issued a preliminary injunction barring the Department from further demolition or evictions at the project, requiring it to rehabilitate certain of the buildings, and ordering it to offer the tenants who had moved out the opportunity to move back in at the Department's expense (77-1463 Pet. App. 4-A to 5-A).[3] *Cole* v. *Lynn*, 389 F. Supp. 99 (D. D.C. 1975).

Both sides then moved for summary judgment on respondents' claim that the tenants who had vacated their apartments were entitled to Relocation Act benefits.[4] The district court granted respondents' motion in part (77-1463 Pet. App. 52-A to 54-A), holding that tenants who had vacated their apartments as a result of the Department's notice to quit were entitled to a prorated portion of the Relocation Act benefits covering the period between the time they left the project and August 1, 1975, the date that

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[3] Only 18 of the 55 families who had vacated the project pursuant to the Department's notice elected to return after the injunction was entered (77-1463 Pet. App. 18-A).

[4] While the appeal on the Relocation Act issue was pending, the district court, with the consent of the parties, remanded the question of the disposition of Sky Tower to the Department for reconsideration in light of the concerns expressed in the district court's opinion on the motion for a preliminary injunction. The Department ultimately reached an agreement with the District of Columbia government under which Sky Tower would be transferred to the District of Columbia, with the Department providing substantial subsidies for its continued operation (77-1463 Pet. App. 7-A n.17).

they were permitted to return under the district court's injunction (77-1463 Pet. App. 7-A). The district court certified the Relocation Act claims for immediate appeal under Fed. R. Civ. P. 54(b), and both sides appealed.

The court of appeals affirmed in part and reversed in part, with one judge dissenting (77-1463 Pet. App. 19-A). The court held that the tenants who left Sky Tower after receiving the Department's notice to quit were "displaced persons" within the meaning of Section 101(6) of the Relocation Act, 42 U.S.C. 4601 (6), and were therefore entitled to the Act's benefits. In addition, the court held that those tenants who did not return to Sky Tower when the district court's injunction made their return possible were nevertheless entitled to full Relocation Act benefits, not prorated benefits terminating when they could have returned to the project, as the district court had held (77-1463 Pet. App. 17-A to 19-A).

The court of appeals noted that the definition of "displaced person" in the Relocation Act contains two clauses—the "acquisition" clause and the "notice" clause. In the court's view, these two clauses provide (77-1463 Pet. App. 9-A)

> two alternative grounds of eligibility: having moved as a result of the acquisition of property for a federal program or project (the acquisition clause); *or* having moved as a result of a written order of the acquiring agency to vacate the property for a federal program or project (the notice clause).



Because it held that the respondents qualified for benefits under the "notice" clause (*ibid.*), the court did not decide whether they would also qualify under the "acquisition" clause (*id.* at 12-A n.28). The court concluded that the "notice" clause was satisfied because (1) the Department had acquired Sky Tower, and was thus the "acquiring agency"; (2) the Department had served on each tenant a written order to vacate; (3) the respondents vacated their apartments as a result of those orders; and (4) the tenants "were ordered to vacate their apartments 'for a program or project undertaken by a Federal agency,' namely, the demolition of the buildings" (*id.* at 9-A to 10-A). The demolition of the Sky Tower buildings was a "program or project" within the meaning of the Act, the court held, because the demolition "was part of a program to 'eliminate blight,'" and thus constituted part of "a federal project 'designed for the benefit of the public as a whole'" (*id.* at 11-A, quoting from 42 U.S.C. 4621).

In dissent, Judge Wilkey disagreed with the court's conclusion that the respondents were "displaced persons" within the meaning of the "notice" clause of Section 101(6) of the Act. In Judge Wilkey's view, the statute was intended to provide benefits for persons who move as the result of a federal agency's voluntary acquisition or proposed acquisition of property for a federal program or project (77-1463 Pet. App. 23-A). In his view, involuntary and random acquisitions, such as the Department's acquisition of Sky Tower after the mortgagor's default and the

mortgagee's transfer of title to the Department in exchange for mortgage insurance benefits, are not acquisitions "for a [federal] program or project" within the meaning of the Act (*id.* at 28-A to 32-A). Judge Wilkey further concluded that the "notice" clause was not intended to provide a basis for granting relocation benefits entirely independent of the "acquisition" clause, but was meant to provide benefits for persons who are ordered to vacate their dwellings in anticipation of an acquisition, whether or not that acquisition ultimately takes place (*id.* at 33-A to 46-A). Thus, in Judge Wilkey's view, respondents were not "displaced persons" under either the "acquisition" clause or the "notice" clause, because the Department did not acquire Sky Tower "for a [federal] program or project."

## SUMMARY OF ARGUMENT

The Relocation Act provides a variety of benefits to persons who meet the statutory criteria for eligibility. Under specified circumstances, the Act provides moving expenses of up to $300 (42 U.S.C. 4622), a dislocation allowance of $200 (*ibid.*), replacement housing payments of up to $15,000 for homeowners and $4,000 for tenants (42 U.S.C. 4623, 4624), and relocation assistance advisory services (42 U.S.C. 4625). The terms of eligibility for these benefits vary somewhat. Moving expenses and a dislocation allowance are available to any "displaced person" whenever "the acquisition of real property for a program or project undertaken by a Federal agency in



any State will result in the displacement" of that person. 42 U.S.C. 4622(a). Replacement housing payments are available to any "displaced person" who, in the case of a tenant, lawfully occupied his or her dwelling "for not less than ninety days prior to the initiation of negotiations for the acquisition of such dwelling." 42 U.S.C. 4624. Relocation assistance advisory services are available to any displaced person whenever "the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement" of that person. 42 U.S.C. 4625(a).

Each of these benefits is available only if the applicant is a "displaced person" within the meaning of the Act. The definition of "displaced person" is contained in Section 101(6) of the Act, 42 U.S.C. 4601(6), and provides in pertinent part:

> The term "displaced person" means any person who * * * moves from real property * * * as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance, * * *.

The definition contains two clauses: the "acquisition" clause, which reaches those who move as a result of an actual acquisition of property for a program or project undertaken by a federal agency, and the "notice" or "written order" clause, which reaches those who move as the result of a written

order by the acquiring agency to vacate the premises, where (in our view) the acquisition or (in our opponents' view) either the acquisition or the written order is for a program or project undertaken by a federal agency.

Plaintiffs[5] argue that they fall within the reach of the "written order" clause of the definition. On their reading, that clause includes all persons who are given a written order to move from property owned by a federal agency, if they are ordered to vacate for a federal program or project. Both groups of plaintiffs are entitled to benefits, they argue, because they were given written orders to move from property that had been acquired by the Department after foreclosure, and because the orders to vacate were for a federal program or project, namely, the demolition or sale of the housing projects from which they were ordered to move.

In our view, this argument is in error for two reasons. First, the statute does not extend relocation benefits generally to persons who are ordered to move from federally owned property; benefits are available only to persons who move or are ordered to move in connection with a federal agency's acquisition or proposed acquisition of the property. A different conclusion would have wide and unintended consequences, making the statutory benefits available to persons

[5] The tenants in these two consolidated cases are petitioners in No. 77-864 and respondents in No. 77-1463. For convenience, we refer to them as "plaintiffs" when referring to them jointly.



ordered to move from all varieties of federally owned property on which persons reside (and from property owned by state and local governments, when the order to move is for a program or project involving federal financial assistance). The language, the structure, and the legislative history of the Act all support the view that the written order clause was intended only to supplement the acquisition clause, by including as "displaced persons" those who move from real property in response to an order issued in connection with the acquisition or proposed acquisition of the property. By virtue of the written order clause, such persons become eligible for relocation benefits without waiting for the acquisition to take place, and without regard for whether or not it ultimately does take place.

In this case, the plaintiffs were not ordered or otherwise forced to move in connection with the federal agency's acquisition of the housing projects; they were ordered to move well after the acquisition, when the agency determined that the housing project could not feasibly continue in operation. Plaintiffs are thus in the same position as any persons who are ordered to move from federally owned property. In the absence of an acquisition or proposed acquisition of the property that produces their dislocation, or a written order connected with such an acquisition or proposed acquisition, such persons are not entitled to the benefits provided by the Relocation Act.

The second flaw in plaintiffs' argument is that it is the acquisition of the property—not the written order

to vacate—which must be for a federal "program or project" in order for Relocation Act benefits to be available. Even if the demolition or sale of a housing project were considered a "program or project" within the meaning of the statute, that would not be sufficient unless the acquisition of the property, not simply the order to vacate, was intended for that purpose. In this case, the agency's acquisition of Sky Tower occurred as the result of the mortgagee's exercise of its rights under the mortgage insurance agreement, and the acquisition of Riverhouse Towers occurred as the result of the foreclosure sale following the mortgagor's default. In neither instance can the agency's acquisition be considered to have been "for a program or project undertaken by a Federal agency," within the meaning of the Relocation Act.

Persons displaced from property owned by a federal agency may well suffer economic and personal hardship as a result of the displacement. Recognizing this, the Department has taken steps to minimize such displacements and to compensate those who are unavoidably displaced. But the hardship that may be suffered by individuals who are ordered to move from federally owned property does not warrant expanding the reach of the Relocation Act well beyond the context that Congress intended for it. Extension of the Act's benefits into a broad new area is a matter for Congress, not for this Court.



## ARGUMENT

### I.

### THE RELOCATION ACT PROVIDES BENEFITS ONLY TO PERSONS WHO MOVE AS A RESULT OF AN ACQUISITION OF REAL PROPERTY OR A WRITTEN ORDER CONNECTED WITH AN ACQUISITION OR PROPOSED ACQUISITION

#### A. The "Plain Meaning" of the Written Order Clause Does Not Support the Interpretation Urged by Plaintiffs

Plaintiffs contend that the plain language of the Relocation Act compels the conclusion that persons given a written order to vacate federally owned property so that the property can be sold or demolished are entitled to relocation benefits under the Act. They base their argument on the written order clause in the statutory definition of "displaced person," 42 U.S.C. 4601(6). That definition provides in pertinent part:

> The term "displaced person" means any person who * * * moves from real property * * * as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; * * *.

The written order clause brings within the definition of "displaced person" a tenant who is forced to move "as the result of the written order of the acquiring agency" to vacate real property, provided that the definition's "program or project" require-

ment is also met (see pages 54-63, *infra*).[6] Plaintiffs construe the written order clause as if it read, "as the result of the written order of the agency *that is acquiring or has previously acquired* real property to vacate [that] property." In contrast, we construe the clause to mean: "as the result of the written order of the agency *that is acquiring* real property to vacate [that] property."

Plaintiffs assert that the term "acquiring agency" must be read to include an agency that has acquired the property at some time in the past. But it is at least equally plausible from the language alone that the term denotes an agency that is engaged in an

[6] The statute refers to "a program or project undertaken by a Federal agency, or with Federal financial assistance" (42 U.S.C. 4601(6)), but it has uniformly been held that the phrase "with Federal financial assistance" refers only to programs undertaken with federal financial assistance by agencies of state governments (including local governments). See *Moorer* v. *Department of Housing and Urban Development*, 561 F.2d 175 (8th Cir. 1977), cert. denied, No. 77-6087 (May 22, 1978); *Parlane Sportswear Co.* v. *Weinberger*, 513 F.2d 835, 837 (1st Cir.), cert. denied, 423 U.S. 925 (1975); *Dawson* v. *U.S. Department of Housing and Urban Development*, 428 F. Supp. 328 (N.D. Ga. 1976). The legislative history confirms this interpretation. The House Committee Report refers to "a program or project undertaken by a Federal agency, or by a State agency with Federal financial assistance." H.R. Rep. No. 91-1656, 91st Cong., 2d Sess. 3 (1970). An effort was made in 1972 to amend the Relocation Act to include displacements caused by acquisitions for private projects enjoying federal financial assistance (see Part (e) of S. 1819, 118 Cong. Rec. 12342-12343 (1972), proposing a new Section 223 for the Relocation Act), but that effort failed. Since there is no claim that any of the plaintiffs were displaced for a state program receiving financial assistance, we have limited our reference throughout to federal programs or projects.



acquisition. If Congress had meant "the written order of the agency that is acquiring or that at some time in the past has acquired the property," it could have said that. What is said was "acquiring agency."

Because the language of the written order clause by no means compels the interpretation urged by plaintiffs, the "plain meaning" rule, relied on by plaintiffs (77-874 Br. 16-17; 77-1463 Br. 14-16), is not applicable. Moreover, plaintiffs' interpretation of the written order clause provides special reason for inquiring into the legislative history and the statutory context of that clause. For plaintiffs' interpretation would markedly expand what has been thought to be the scope of the Relocation Act, extending the Act beyond the context of property acquisitions and making it applicable to all persons ordered to move from federally owned property.

Plaintiffs' interpretation would apparently make benefits available under the Act to persons ordered to move from federally owned housing projects for breaking the rules of the project or failing to pay rent, or to persons ordered to move from federally financed homes after foreclosure of their mortgages for failure to make mortgage payments (see 42 U.S.C. 4623).[7] Plaintiffs' interpretation would apparently

[7] Plaintiffs might argue that displacements of this kind would not fall within the coverage of the Relocation Act because the order to move would not be "for a program or project" of the federal agency. But if an order to move issued in an effort to "eliminate blight" or to minimize losses on an entire housing project is "for a program or project," as plaintiffs contend, it seems equally plausible to reach that conclusion about an order issued to enforce the rules of the project or to minimize losses on particular units.

reach any branch of the federal government that provides living accommodations on property it owns and then decides to terminate those accommodations in order to use the premises or the land for some other program or project. If the Army was closing a base and therefore ordered its personnel to vacate on-base housing, or if at a continuing base it decided to terminate certain on-base housing to make way for some program or project, it would apparently be required to pay relocation benefits under the Act to the persons ordered to move.

In addition, the term "agency" in Section 101(6) includes an agency of a state or local government that is undertaking a program or project "with Federal financial assistance" (see page 22, note 6, *supra*). Hence, on plaintiffs' interpretation of "acquiring agency," the entitlement to relocation benefits under the written order clause would extend to persons ordered to move from property owned by state and local governments to make way for programs or projects involving federal financial assistance.[8]

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[8] For example, under the Department's college housing program, 12 U.S.C. 1749 *et seq.*, if a state university decided to make use of federal funds to convert long-owned residential property into college dormitories, it would apparently be required, on plaintiffs' theory, to pay relocation benefits to the tenants who had been living on its property and were now ordered to move. Moreover, if the university decided to raze an existing dormitory, or faculty housing, in order to construct a laboratory or other facility with the aid of federal funds, it would apparently have to pay relocation benefits, on plaintiffs' theory, to the students or faculty whom it ordered to move.



Such results would be startling. They would have little relation to the basic purpose of the Relocation Act, which is to provide benefits in excess of the amounts payable under traditional concepts of just compensation to persons whose businesses or dwellings are taken by the government to make way for public projects. H.R. Rep. No. 91-1656, 91st Cong., 2d Sess. 1-2 (1970); *Caramico* v. *Secretary of the Department of Housing and Urban Development*, 509 F.2d 694, 698-699 (2d Cir. 1974). Hence, even if the detached language of the written order clause appeared plainly to support plaintiffs' construction, the Court would look behind the statutory language to determine the scope Congress intended for the clause. As the Court said in *United States* v. *American Trucking Association*, 310 U.S. 534, 542-544 (1940) (footnotes omitted):

> In the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of Congress. There is no invariable rule for the discovery of that intention. To take a few words from their context and with them thus isolated to attempt to determine their meaning, certainly would not contribute greatly to the discovery of the purpose of the draftsmen of a statute, particularly in a law drawn to meet many needs of a major occupation.
>
> There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the

> purpose of the legislation. In such cases we have followed their plain meaning. When that meaning has led to absurd or futile results, however, this Court has looked beyond the words to the purpose of the act. Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one "plainly at variance with the policy of the legislation as a whole" this Court has followed that purpose, rather than the literal words. When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no "rule of law" which forbids its use, however clear the words may appear on "superficial examination."

See also *Connell Construction Co.* v. *Plumbers & Steamfitters Local Union No. 100*, 421 U.S. 616, 628 (1975); *National Woodwork Manufacturers Association* v. *NLRB*, 386 U.S. 612, 619 (1967); *Sorrells* v. *United States*, 287 U.S. 435, 446-448 (1932); *United States* v. *Ryan*, 284 U.S. 167, 175 (1931).[9]

In this case, the light shed by both the structure and the legislative history of the Act is unusually clear. It shows that Congress intended, not the broad reading of the written order clause proposed by

[9] Contrary to plaintiffs' suggestion, the Court's recent decision in *Tennessee Valley Authority* v. *Hill*, No. 76-1701 (June 15, 1978), is not to the contrary. In that case the Court found both that the literal meaning of Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1536, was clear and that there was nothing in the structure or the history of the Act "to support the assertion that the literal meaning of § 7 should not apply in this case." Slip op. 32 n.33.



plaintiffs, but the narrower interpretation that we urge.

**B. The Structure of the Relocation Act Indicates That Benefits Were Intended To Be Available Only When the Claimant Is Forced To Move in Connection With an Acquisition Or a Proposed Acquisition of Real Property**

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 has two parts: one part governs procedures that federal agencies must follow when acquiring land from private owners for federal programs (42 U.S.C. 4651-4655); the other part governs the provision of relocation benefits for persons "displaced" by such programs (42 U.S.C. 4601-4638). The juxtaposition is not fortuitous; both parts reflect the basic purpose of the Act, which is to provide fair, equitable, and consistent treatment of persons affected by the acquisition of property for federal projects. See H.R. Rep. No. 91-1656, 91st Cong., 2d Sess. 1-2 (1970). Both parts of the Act were intended to alleviate some of the hardships caused by governmental takings of property, in part by providing compensation for interests not compensable under the law of eminent domain. *Ibid.* Thus, the focus of the Act is on governmental acquisitions of property, and the relocation benefit provisions are accordingly keyed to displacements caused by such acquisitions.

More specifically, the four sections of the Act that govern the availability of benefits to "displaced persons" all provide benefits only in the context of an

acquisition or proposed acquisition of property. Sections 202 and 205 of the Act, 42 U.S.C. 4622, 4625, provide for payment of moving and related expenses and for relocation assistance advisory services. Under both of these sections, the benefits are available only when "the acquisition of real property for a program or project undertaken by a Federal agency in any State will result in the displacement of any person * * *" (See the text of the sections at pages 3-4, 6-8, *supra.*) Similarly, Sections 203 and 204 of the Act, 42 U.S.C. 4623 and 4624, govern the payments for replacement housing to displaced homeowners and tenants. Under both of these sections, the benefits are available only to persons who occupied their dwellings for a prescribed period of time "prior to the initiation of negotiations for the acquisition of the property." [10]

Thus, these operative sections of the Act are all keyed exclusively to acquisitions or proposed acquisitions of property. By their terms, none of these sections would make relocation benefits available to persons given a written order to vacate property in the absence of an acquisition or proposed acquisition. These sections would apply awkwardly, if at all, to persons "displaced" under plaintiffs' construction of the written order clause.

[10] The quoted language is from Section 203, 42 U.S.C. 4623. The language in Section 204, 42 U.S.C. 4624, varies immaterially: "prior to the initiation of negotiations for acquisition of such dwelling." See the text of Section 204 at page 5, *supra.*



The extent to which plaintiffs' theory clashes with the four operative sections of the Act is well illustrated by the facts of the *Cole* case. Since the *Cole* plaintiffs were ordered to vacate Sky Tower more than a year after the Department acquired it, and not as a result of the Department's acquisition,[11] the *Cole* plaintiffs apparently would not be eligible for moving and related expenses under Section 202 of the Act (42 U.S.C. 4622), or for relocation assistance advisory services under Section 205 (42 U.S.C. 4625), even though, on their theory, they would be "displaced persons" under the definition of Section 101(6).

The availability of replacement housing benefits under Section 204 of the Act, 42 U.S.C. 4624, would also be distorted under plaintiffs' construction of the written order clause. Since Section 204 permits replacement housing benefits to be paid only to persons who lawfully occupied their dwellings "for not less than ninety days prior to the initiation of negotiations for acquisition of such dwelling," it is doubtful that all the *Cole* plaintiffs would be eligible for benefits. Even if the 90-day period was deemed to run from the date of the actual acquisition of the property by the Department,[12] only those plaintiffs who

[11] The *Cole* plaintiffs expressly disavow reliance on the "acquisition" clause of Section 101(6), which would require that they had moved from Sky Tower "as a result of the acquisition of such real property" (42 U.S.C. 4601(6)). 77-1463 Br. 15 & n.17.

[12] Since there were no "negotiations for acquisition" prior to the transfer of title from the mortgagee to the Depart-

happened to have been living in Sky Tower for 90 days prior to the transfer of title would be eligible for replacement housing benefits, although the order to vacate was issued 15 months after the transfer of title. This anomaly provides further evidence that the statutory scheme of relocation benefits was meant to be triggered by an acquisition, not by a written order to vacate unconnected with an acquisition.

In contrast, our construction of the written order clause meshes well with the operative sections of the Act. If the written order of the acquiring agency means a written order issued in connection with an acquisition or proposed acquisition, then when tenants move in response to such an order it follows that "the acquisition of real property * * * will result in the displacement" of those tenants for purposes of Sections 202 and 205. By virtue of the written order clause, there is no need to wait for the acquisition actually to take place before the benefits become available under these sections, and their availability does not depend on whether the acquisition does ultimately take place.

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ment, in the sense that the term "negotiations" is used in Section 301 of the Act, 42 U.S.C. 4651, it may be that none of the *Cole* plaintiffs would be eligible for replacement housing benefits under Section 204, even assuming that they qualify as "displaced persons." The tying of Section 204 to "negotiations for acquisition"—and hence to the "uniform policy on real property acquisition practices" set forth in Section 301—supports Judge Wilkey's view (77-1463 Pet. App. 30A) that the Act does not apply to involuntary acquisitions such as the ones involved in these cases.



Similarly, under our construction of the written order clause the tying of replacement housing benefits under Section 204 to the initiation of negotiations for acquisition is rational, since the written order to vacate will ordinarily be issued roughly contemporaneously with the acquisition. Under this construction the 90-day restriction has a logical purpose, since it will generally avoid the need to make replacement housing payments to persons who move onto the property after the acquisition process has begun. At the same time, tenants who are required to move by the written order issued in connection with the acquisition will be immediately eligible for the replacement housing benefits without regard for the timing or the ultimate outcome of the actual acquisition.

Further support for our construction of the written order clause is provided by Section 217 of the Act, 42 U.S.C. 4637, which extends the benefits of the Act to persons displaced by "code enforcement, rehabilitation, and demolition programs" carried out under specified federal statutes.[13] On the interpretation of the written order clause urged by plaintiffs, the persons covered by Section 217 would already be covered

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[13] These are programs receiving federal financial assistance under Title I of the Housing Act of 1949, 42 U.S.C. 1450 *et seq.*, and Title I of the Demonstration Cities and Metropolitan Development Act of 1966, 42 U.S.C. 3301 *et seq.* With the enactment of the Housing and Community Development Act of 1974, Pub. L. No. 93-383, 88 Stat. 633, the initiation of new programs under these two statutes came to an end.

by the Act, since they would have been ordered by an agency that had previously acquired the property to vacate the premises in order that a code enforcement, rehabilitation, or demolition program could be completed. The need perceived by the drafters to include a special section to provide coverage for such persons suggests that it was not contemplated that they would be covered by the general terms of the statute.

### C. The Legislative History Establishes That the Relocation Act Was Intended To Provide Benefits Only to Persons Forced To Move as a Result of an Acquisition Or a Proposed Acquisition of Property

The legislative history of the Relocation Act is extensive and complex. Proposals for relocation legislation were under consideration by Congress for almost a decade and produced a number of hearings, dozens of bills, and several House and Senate reports. From all this material, two relevant points emerge: From the beginning, the Relocation Act was designed to alleviate the burdens imposed by governmental acquisitions of private property. And the definition of "displaced person," which underwent several changes in the course of the statute's consideration, was intended throughout to provide eligibility for relocation benefits only to persons displaced by acquisitions or proposed acquisitions of property.

Prior to the 1960's, Congress had enacted several statutes providing relocation benefits or services for persons displaced when particular federal agencies



acquired land for particular projects,[14] but there was no general legislation governing federal land acquisition or relocation policies. Accordingly, relocation benefits varied widely from program to program. In 1961, recognizing a need for uniform legislation in this area, the House Public Works Committee established the Select Subcommittee on Real Property Acquisition. The Select Subcommittee was charged with the responsibility of conducting a comprehensive study

> in order to determine whether owners, tenants, and other persons affected by the acquisition of real property in Federal or federally assisted programs receive fair and equal treatment, and adequate compensation, considering the value of their property and the losses and expenses they incur on being required to move from their homes, farms, or business locations.

House Select Subcomm. on Real Property Acquisition, *Study of Compensation and Assistance for Persons*

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[14] The pre-1960 statutes included the Tennessee Valley Authority Act of 1933, ch. 32, 48 Stat. 58, as amended, ch. 836, 49 Stat. 1075, 1080 (1935), which gave the TVA the authority to "advise and cooperate" in the "readjustment" of persons displaced from land acquired by TVA; the Act to Authorize Certain Construction of Military and Naval Installations, etc., ch. 434, Section 501(b), 65 Stat. 364 (1951), which provided for reimbursement to tenants and landowners of moving and related expenses in connection with the acquisition of properties for military use; and the Act of May 29, 1958, Pub. L. No. 85-434, 72 Stat. 152 (43 U.S.C. (1964 ed.) 1231 (repealed 1971)), which provided for repayment of expenses incurred as a result of acquisitions of property for the construction, maintenance, or operation of developments under the jurisdiction of the Secretary of the Interior.

*Affected by Real Property Acquisition in Federal and Federally Assisted Programs*, Committee Print No. 31, 88th Cong., 2d Sess. 1 (1964) (hereafter "*Select Subcomm. Study*"). The result of the Subcommittee's study was a lengthy report recommending legislation to provide uniform standards for federal land acquisition programs, including provisions for relocation benefits for landowners and tenants displaced by those programs. *Select Subcomm. Study, supra*, at 147.

The "Fair Compensation Act" proposed by the Subcommittee, like the ultimate Relocation Act, provided relocation benefits to persons falling within the definition of "displaced person." That term was defined to include a family or individual who moves from real property "as a result of the acquisition or imminence of acquisition of such real property, in whole or in part, by a Federal or State agency." *Select Subcomm. Study, supra*, at 157-158 (Sections 115 (2)(C) and 115 (2)(D) of the proposed Fair Compensation Act). The necessary connection between the acquisition and the availability of relocation benefits was also made clear in the operative sections of the proposed statute. Section 107(a), for example, provided in pertinent part (*Select Subcomm. Study, supra*, at 151):

> If the head of any Federal agency acquires real property for public use in a State, or the District of Columbia, he shall make fair and reasonable payments to displaced persons * * *.

Similarly, Section 108(a) made "relocation assistance program[s]" available to displaced persons under the



same condition—that the head of a federal agency "acquires real property for public use" (*id.* at 152).

In accordance with its purpose of establishing uniform standards of relocation benefits for federal programs, the Fair Compensation Act proposed to repeal all the pre-existing federal relocation benefit provisions. See *id.* at 159 (Fair Compensation Act, Section 118). All but one of those statutes provided relocation benefits only when the displacement was caused by an acquisition of property. The exception was the relocation benefits provision for Urban Renewal projects, which was contained in the Housing Act of 1964, ch. 649, Sections 305, 310, 78 Stat. 786, 788-790, and which provided benefits for persons displaced from Urban Renewal areas by (1) the acquisition of real property by a public agency, (2) code enforcement activities, or (3) rehabilitation activities. 78 Stat. 788. Since the proposed Act was limited to displacements caused by an "acquisition or imminence of acquisition," a special section had to be added to it to ensure that the Urban Renewal relocation benefits provision remained in force. That section, which was Section 113 of the Fair Compensation Act, ultimately became Section 217 of the Uniform Relocation Act, 42 U.S.C. 4637 (see pages 31-32, *supra*). The fact that a special section was created and maintained in the new Act to preserve the only federal relocation benefit provisions not keyed to an acquisition of property[15] indicates that the general

[15] Respondents in *Cole* refer to Section 123 of the Housing Act of 1954, 68 Stat. 596, 599-600, as earlier statutory "relocation provisions" that were not triggered by an acquisition.

provisions of the Relocation Act were not intended to create rights to relocation benefits outside the context of acquisitions of property.

The Fair Compensation Act was introduced in the 89th Congress, in 1965, as S. 1201. A shorter version, which contained the same relocation provisions as the Fair Compensation Act, was introduced as S. 1681 and entitled the Uniform Relocation Act of 1966. Similar bills, but less comprehensive in scope, were introduced in the House. See Title IV of H.R. 7984; Title V of H.R. 6501. The Senate Committee on Government Operations reported favorably on S. 1681. S. Rep. No. 1378, 89th Cong., 2d Sess. (1966).[16] As the Select Subcommittee Report had done, the Senate Report on S. 1681 made it clear that the statute was intended to provide benefits for those displaced by acquisitions of property. The Report stated:

> The purpose of S. 1681, as amended, is to establish a uniform policy for the fair and equitable treatment of owners, tenants, and other persons displaced by the acquisition of real property for Federal and federally assisted programs, and by other activities undertaken in connection with programs authorized by title I of the Housing Act of 1949, as amended [Urban Renewal Programs]. [*Id.* at 1.]

77-1463 Br. 21; compare 77-874 Br. 8. That provision was not a relocation benefits statute, but a statute providing mortgage insurance to potential mortgagees to encourage the development of housing that would "assist in relocating families to be displaced as the result of" government action. 68 Stat. 599.

[16] The Senate Committee determined that the land acquisition provisions, which were included in S. 1201 but not in S. 1681, were too complex to be dealt with at that time. Therefore S. 1681 was selected over S. 1201 as the appropriate legislation to report out of committee. See *id.* at 20.



The definition of "displaced person" in S. 1681, when introduced, was the same as it had been in the proposed Fair Compensation Act: a person was deemed displaced if he moved "as a result of the acquisition or imminence of acquisition" by a federal or state agency of the property on which he lived. During the hearings on the bill, however, the phrase "or imminence of acquisition," was criticized as ambiguous.[17] In response to those criticisms, the Committee amended the definition by changing "or imminence of acquisition" to "or reasonable expectation of acquisition." As the Committee reported, this change was adopted

> to remove some of the ambiguities surrounding the meaning of "imminence" and to make it amply clear that this legislation applies to persons who move from property to be acquired in connection with a Federal or federally assisted program when or shortly after the proposed project is announced, and when the announcement is made substantially prior to the time the project is to be put into effect.

S. Rep. No. 1378, 89th Cong., 2d Sess. 9 (1966).

[17] *Hearings on S. 1201 and S. 1681 Before the Subcomm. on Intergovernmental Relations of the Senate Comm. on Government Operations*, 89th Cong., 1st Sess. 55 and 90 (1965).

S. 1681 passed the Senate, 112 Cong. Rec. 16745 (1966). But the House Committee failed to report it out by the end of the 1966 legislative session, and it therefore was not enacted by the 89th Congress.[18]

The bill was reintroduced in the 90th Congress as part of the Intergovernmental Cooperation Act, S. 698. The first six titles of that larger bill were taken from S. 651, the Intergovernmental Cooperation Act of 1965, which had failed to pass the 89th Congress; two of the titles constituted the former S. 1681, the Uniform Relocation Act of 1966.

Again it was clear that the Relocation Act titles were intended to provide benefits in cases of displacements caused by governmental acquisitions of property. See S. Rep. No. 1456, 90th Cong., 2d Sess. 24 (1968). Senator Muskie, when introducing the bill in the Senate, stated that it "established a uniform policy for the fair and equitable treatment of owners, tenants, and other persons displaced by the acquisition of real property in Federal and federally assisted programs so that as far as practical such persons shall be left not worse off economically." 114 Cong. Rec. 24056 (1968). Similarly, the language of the definitional sections was the same as it had been

[18] Although the House did not pass S. 1681, both the House and the Senate in the 89th Congress passed a similar but more limited relocation provision applicable to the Department of Housing and Urban Development. That provision was contained in Title IV of the Housing and Urban Development Act of 1965, Pub. L. No. 89-117, 79 Stat. 486. The provision was repealed by uncodified Section 220(a)(8) of the Relocation Act, Pub. L. No. 91-646, 84 Stat. 1903.



in the Senate Committee's 1966 version, including the reference to persons displaced "as a result of the acquisition, or reasonable expectation of acquisition, of * * * real property, in whole or in part, by a Federal or State agency." Section 112(4), 114 Cong. Rec. 24049-24050 (1968). The Senate Committee in the 90th Congress made a number of changes in the relocation provisions of the bill, but the basic purpose and the definitional language remained unchanged. The purpose was still to provide "fair and equitable treatment of people displaced by acquisitions." S. Rep. No. 1456, *supra*, at 11, 24.

S. 698 passed the Senate without debate. 114 Cong. Rec. 24057 (1968). But the House passed only the six titles constituting the Intergovernmental Cooperation Act. The two titles constituting the Uniform Relocation Act were determined to be more properly within the jurisdiction of the House Public Works Committee, so once again the Uniform Relocation Act died in the House.[19]

The next year the bill was again introduced, this time as S. 1 of the 91st Congress. The new S. 1 tracked its predecessors, S. 1681 and S. 698, very closely. It also tracked the Highway Relocation Assistance provisions of the Federal-Aid Highway Act of 1968, Pub. L. No. 90-495, 82 Stat. 830, which afforded relocation benefits to persons displaced "as a result of

[19] See S. Rep. No. 91-488, 91st Cong., 1st Sess. 7 (1969). While the conferees on S.698 acceded to the House' deference to its Public Works Committee, they were said to be "in agreement on the desirability of congressional action on a uniform relocation and acquisition bill * * *." *Ibid.*

the acquisition or reasonable expectation of acquisition of * * * real property, which is subsequently acquired, in whole or in part, for a Federal-aid highway" (82 Stat. 834).[20] See S. Rep. No. 91-488, 91st Cong., 1st Sess. 2 (1969). As the language of the Federal Aid Highway Act makes apparent, that Act was in turn based on the Uniform Relocation Act titles of S. 698. See S. Rep. No. 1340, 90th Cong., 2d Sess. 2 (1968).

The Senate Committee reported the bill (with minor amendments), and the Senate passed it without significant debate. S. Rep. No. 91-488, 91st Cong., 1st Sess. (1969); 115 Cong. Rec. 31533-31535 (1969). As reported and passed by the Senate, the bill still clearly applied only to displacements caused by acquisition or the reasonable expectation of acquisition of property. The "Declaration of Policy" section of S. 1 provided, as had its predecessors, that the purpose of the Act was

> to establish a uniform policy for the fair and equitable treatment of owners, tenants, and other persons displaced by the acquisition of real property in Federal and federally assisted programs to the end that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.

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[20] The Highway Relocation Assistance provisions of the Federal-Aid Highway Act were repealed by uncodified Section 220(a)(10) of the Relocation Act, Pub. L. No. 91-646, 84 Stat. 1903.



S. 1, Section 201, 115 Cong. Rec. 31372 (1969). And the definition of "displaced person" still spoke of persons forced to move "as a result of the acquisition or reasonable expectation of acquisition of real property." S. 1, Section 105, 115 Cong. Rec. 31372 (1969).

In the House Committee, the bill underwent a number of changes. First, the Committee substantially reorganized and shortened Title II of S. 1, which contained the relocation assistance provisions. In so doing the Committee combined the preamble and the "Declaration of Policy" section of S. 1 into a new "Declaration of Policy" section, Section 201 of the new bill, ultimately enacted as 42 U.S.C. 4621. See 116 Cong. Rec. 42133 (1970). Although the new Declaration of Policy did not refer to acquisitions of property, but only to "persons displaced as a result of Federal and federally assisted programs," it is clear from the House Report that the legislation was still directed at displacements caused by acquisitions of property. The Committee stated that the bill "provides for relief of the economic dislocation which occurs in the acquisition of real property for Federal and federally assisted programs." H.R. Rep. No. 91-1656, 91st Cong., 2d Sess. 3 (1970).

The more significant change made by the House Committee was in the definition of "displaced person." The House Committee amended the language employed in S. 1 and substituted the language that was ultimately enacted. Thus, in place of the phrase "as a result of the * * * reasonable expectation of

acquisition of real property," the House Committee substituted the phrase "as a result of the written order of the acquiring agency to vacate real property." Plaintiffs suggest that this substitution expanded the scope of the statute to reach beyond the context of acquisitions of property. The contemporaneous materials suggest otherwise.

The House bill that paralleled S. 1 was H.R. 14898. It defined "displaced person" slightly differently from S. 1, as follows:

> The term "displaced person" means any person who moves from real property * * * as a result of the acquisition or reasonable expectation of acquisition of such real property, which is subsequently acquired, in whole or in part, for a Federal program or Federal grant-in-aid program * * *.

H.R. 14898, printed in *Hearings Before the House Comm. on Public Works*, 91st Cong., 1st & 2d Sess. 14 (1970). S. 1, as it passed the Senate, used a similar definition but without the requirement that the property be subsequently acquired. 115 Cong. Rec. 31372 (1969); see page 41, *supra*.[21] Thus, under the Senate bill a person who moved in reasonable expectation of an acquisition would be entitled to relocation benefits whether or not the property was ultimately acquired, while under the House bill relocation benefits would be available only if the property was in fact acquired. In the course of the House hearings on the two bills, various witnesses commented on the difference in the language of the definition. See *Uniform Relocation Assistance and Land Acquisition Policies—1970: Hearings on H.R. 14898, H.R. 14899, S. 1 and Related Bills Before the House Comm. on Public Works*, 91st Cong., 1st & 2d Sess. 137, 282, 416, 541, 595-596, 1028 (1969-1970) (hereafter cited as *1970 House Hearings*). A number of them criticized the phrase "or reasonable expectation of acquisition" as too vague. See *id.* at 137, 281, 416, 595-596, 1028. Several of the witnesses suggested that instead of the vague term "expectation of acquisition," the statutory benefits should be triggered by a more readily discernible fact, such as some official act. One witness suggested (*id.* at 281):

> It would be helpful if a more specific term than "reasonable expectation" were used. We feel that the program would be more easily handled if reasonable expectation were defined as a specific time related to the initiation of negotiations or the authorization to acquire the right of way.

The Department of Transportation representative suggested that relocation benefits should not be available simply because of a "reasonable expectation" of acquisition. Instead, he testified (*id.* at 596):

> We think some limitation is desirable. Relocation payments should be limited to persons actually displaced or who move due to some official act of the public authorities such as a notice of condemnation.

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[21] The requirement that the property be subsequently acquired had been embodied in the Highway Relocation Assistance provisions of the Federal-Aid Highway Act, Pub. L. No. 90-495, 82 Stat. 834; see pages 39-40, *supra*.

Finally, the representative from the Department of Housing and Urban Development recommended a similar solution for resolving the difference between the House and Senate bills (*id.* at 1027-1028):

> The provisions in the House bills require a person to remain in his dwelling until the property is actually acquired to know if he can qualify for relocation assistance. We believe this produces unnecessary hardship and prevents an orderly relocation process. * * * *
>
> Relocation payments should not be made to those who move on the basis of speculation regarding the intent to take their property. We favor a provision limiting reimbursement to persons [who move] after some official act which clearly threatens displacement even though the property is never subsequently acquired.

The representatives from both the Department of Transportation and the Department of Housing and Urban Development referred the committee to their relocation regulations, both of which provided for eligibility on the basis of an "official act" that made it sufficiently certain that the property would be acquired to justify making relocation payments in advance of the actual acquisition. The Transportation regulations governing displacements under the Highway Relocation Assistance Program provided that one moves as a result of the "reasonable expectation of acquisition of such real property" if he or she moves after notification that the property is to be acquired (*id.* at 1007). The Housing and Urban Development regulations governing relocations for Urban Renewal



projects provided that a resident would be deemed displaced by an acquisition of property "if the vacation of the real property occurs after the Agency has acquired legal or equitable title or right to possession and has ordered the site occupant to vacate the real property" (*id.* at 1069).

It was in the light of these suggestions that the House Committee altered the language of the definition of "displaced person." The Committee replaced "or reasonable expectation of acquisition" with "or as the result of the written order of the acquiring agency to vacate real property." The Committee thus compromised between the Senate bill and the House bill by permitting relocation benefits to be paid even in the absence of an actual acquisition, but only on the occurrence of an official act: the issuance of a written order to vacate.

The contemporaneous materials support this interpretation of the House Committee's action. Perhaps most significant, little attention was paid to the change either in the House or the Senate. It is hard to credit the thesis that the House Committee intended to work a major expansion in the scope of the definition of "displaced person," and thus in the scope of the Act, with only a minor reference in the House Report and with almost no response from the Senate. The reference in the House Report, though brief, is illuminating. The Report explained that under the newly drafted written order clause, "[i]f a person moves as the result of such a [written] notice to vacate, it makes no difference whether or not the real

property actually is acquired." Thus, the Report suggests that the written order clause, like its predecessors, was intended to cover cases in which a tenant moves in advance of an acquisition, even if the "acquiring agency" ultimately fails to acquire the property. H.R. Rep. No. 1656, 91st Cong., 2d Sess. 4 (1970).

Several witnesses noted in the course of the House hearings that the House bill would not provide benefits for persons displaced from property other than in the context of an acquisition. See *1970 House Hearings*, *supra*, at 234, 253, 270, 360. The comments were provoked in part by the failure of the House bill to contain a provision continuing in force the availability of relocation benefits for persons displaced by code enforcement and rehabilitation in Urban Renewal projects. But the comments went beyond the absence of an Urban Renewal relocation provision, and several of the witnesses suggested amendments that would have expanded the scope of the Act more generally to cover persons displaced in the absence of an acquisition. See *1970 House Hearings*, *supra*, at 234, 360. The House Committee included the Urban Renewal relocation provision, which became Section 217 of the Relocation Act (42 U.S.C. 4637), but it failed to include any of the broader amendments that had been suggested.

Instead of broadening the bill to encompass "non-acquisition" displacements, the House Committee narrowed the scope of the Senate bill with respect to one



special section that provided for relocation benefits in the absence of an acquisition. That section, which became uncodified Section 219 of the Relocation Act, Pub. L. 91-646, 84 Stat. 1903, extended the benefits to a limited class of persons required to move as a result of contemplated demolition of property in the Murray Hill area of New York City. The Senate had apparently concluded that these people would not be encompassed by the statutory definition of "displaced person," since title to the land had been acquired by the government years before, and acquisition preceded some of the current tenants' leases. See *Uniform Relocation Assistance and Land Acquisition Policies Act of 1969: Hearings Before the Subcomm. on Intergovernmental Relations of the Senate Comm. on Governmental Operations*, 91st Cong., 1st Sess. 164-169 (1969); see also *1970 House Hearings*, *supra*, at 66-69. But while the Senate version of the bill had extended special protection to the Murray Hill displacees by the use of general language, the House version narrowed the language to make it clear that the Murray Hill project was the only one of its kind that was to be brought within the coverage of the Relocation Act. Moreover, after noting that a special exception had been made for the Murray Hill residents, the House Report warned that "[t]his section is to cover a specific situation resulting from the acquisition and long-term holding by the Federal Government of certain property in the City of New

York. It is not to be considered as a precedent of any nature." H.R. Rep. No. 91-1656, *supra*, at 21.[22]

The debate on the House floor was brief, and in no way suggested that the House members considered that the House bill had expanded the reach of the Act beyond the context of acquisitions. Indeed, a number of the members who spoke in favor of the bill (116 Cong. Rec. 40167-40172 (1970)) specifically characterized it as a statute designed to provide benefits for persons displaced by acquisitions of property. See 116 Cong. Rec. 40167 (1970) (Rep. Edmondson); *id.* at 40169 (Rep. Cleveland); *id.* at 40170 (Rep. Johnson); *id.* at 40171 (Rep. Brotzman); *id.* at

[22] The *Alexander* plaintiffs point to a statement made in the House Hearings and an excerpt from the House Report in support of their contention that the House Committee vastly broadened the reach of the definition of "displaced person" with its adoption of the written order clause (77-874 Br. 26-28). Neither selection supports their position. Rep. Mink's statement submitted to the House Committee reflected her understanding that the persons displaced by the projects she referred to would be eligible for relocation benefits under both the Senate and the House bills as they were introduced, and without the written order clause. See *1970 House Hearings*, *supra*, at 105. The excerpt from the House Report refers to the Post Office Department's mode of acquiring property for the construction of new facilities. Noting that the Department often did not directly acquire property for its facilities but instead used a system of options and leasebacks, the House Report emphasized that the mode of acquisition was not important. "The controlling point," the Report stated, "is that the real property must be acquired for a Federal or Federal financially assisted program or project." H.R. Rep. No. 91-1656, *supra*, at 4. Thus, the Report was noting that acquisitions of the type employed by the Post Office Department would fall within the acquisition clause, not the written order clause.



40171-40172 (Rep. Annunzio). See also 116 Cong. Rec. 42506 (1970) (Rep. Edmondson); *id.* at 42507 (Rep. Hall).

When the bill returned to the Senate, the changes made by the House Committee were accepted without a conference and almost without debate. The only reference to the change in the definition of "displaced person" appeared in a memorandum submitted by Senator Percy on behalf of the Administration. 116 Cong. Rec. 42139 (1970). In analyzing differences between the House and Senate bills, the memorandum read, in relevant part:

> *Definition of displaced person.* The House bill would limit the status of displaced person to those who move as the result of the acquisition of, or written notice to vacate, real property. The Senate version would provide a broader definition which includes those who move as the result of acquisition or reasonable expectation of acquisition.

Consistently with the House Report, this memorandum reflected the understanding that the House bill narrowed the scope of the Senate language. The House version prevailed over the Senate's "broader definition," and the language put forward by the House became the written order clause in Section 101(6) of the Act.

As Judge Wilkey concluded in his dissenting opinion below, the change by the House "limited the definition, and certainly did not vastly expand it by covering all persons displaced with notice from prop-

erty already owned and acquired by the agency" (77-1463 Pet. App. 41A (emphasis omitted)). As Judge Wilkey also concluded, the House and Senate versions of the written order clause "shared the same purpose," which was "to cover those given notice who moved prior to acquisition or who moved even though the anticipated acquisition did not occur" (*ibid.* (emphasis omitted)).

The legislative history of the written order clause thus supports the view that the clause was not intended to have the broad meaning ascribed to it by plaintiffs. It was not meant to expand the scope of the Act beyond the context of property acquisitions. It was meant to supplement the acquisition clause by permitting the tenant to depart prior to the actual acquisition of the property without losing his or her relocation benefits.[23]

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[23] Plaintiffs place great weight on statements made by Senator Baker in the course of an unsuccessful 1972 effort to amend the Relocation Act. See 118 Cong. Rec. 12343 (1972) and *Proposed Amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970: Hearings on S. 1819 and Related Bills Before the Subcomm. on Roads of the House Comm. on Public Works*, 92d Cong., 2d Sess. 58 (1972); 77-1463 Br. 24 & n.39. Such retrospective statements by individual legislators are of doubtful relevance in any event. But as we noted previously (see note 6, *supra*), S. 1819 was directed at the limitation of the Act to federal projects and state agency projects using federal financial assistance. The bill would have extended the Act to acquisitions for all federally assisted projects; it would not have expanded the definition of "displaced person."



### D. Department Regulations Support the Narrow Interpretation of the Written Order Clause

The Department of Housing and Urban Development has promulgated regulations governing the distribution of relocation benefits to persons eligible for them under the Relocation Act. See 24 C.F.R. Part 42. Those regulations support our construction of the written order clause, by making it clear that the general provisions of the Act apply only to displacements caused by acquisitions of property.

The definition of "displaced person" in the regulations includes only persons who are displaced "as a result of acquisition of such real property * * *." 24 C.F.R. 42.20(d)(2), 42.55(a)(2)(i).[24] The regulations further provide that displacement "as a result of the acquisition of real property" includes displacement which is a result of:

> (1) The obtaining by the acquiring agency of title to or the right to possession of such real property for a project;
>
> (2) The written order of the acquiring agency to vacate such property for a project; or
>
> (3) The issuance by the acquiring agency of a written notice to the owner of its intent to acquire the real property for such project * * *.

24 C.F.R. 42.55(e).

Plaintiffs seize on the separate listing of "written order" and "written notice * * * of * * * intent to acquire" to support their reading of the written order

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[24] The definition also includes persons falling within the special relocation provision contained in Section 217 of the Act, 42 U.S.C. 4637, which is not applicable in this case. 24 C.F.R. 42.20(d)(3).

clause as requiring that benefits be provided outside the context of an acquisition. But the regulations point the other way. A displacement that is the result of the "written order of the acquiring agency" is specifically identified as a displacement "as a result of the acquisition of real property." 24 C.F.R. 42.55(e). Moreover, the "written order" and "written notice" provisions in the regulations apply quite logically in the context of an acquisition. The "written notice" provision applies to pre-acquisition notices of intent to acquire property, while the "written order" provision applies to pre- or post-acquisition orders to move from the property. The critical factor, as the regulations make clear, is that the written notice or the written order—whether prior to, contemporaneous with, or subsequent to the acquisition—is associated with the acquisition. 24 C.F.R. 42.20(d)(2), 42.55(e). See also HUD Handbook 1371.1 REV, *Relocation Policies and Procedures*, ch. 4 § 1a(1) (1975).[25]

[25] Plaintiffs make the related argument (77-874 Br. 25; 77-1463 Br. 17-19) that the written order clause must apply to post-acquisition orders because an agency that has not yet acquired a property cannot "order" residents on the property to vacate. But as we have noted, the written order clause applies to both pre-acquisition and post-acquisition orders, as long as the written order is made in connection with the acquisition. The written order clause was included in the statute to provide a more certain test for determining when a tenant's departure was caused by an acquisition, either impending or recently completed. And of course an agency that has not yet legally acquired a property can, in a realistic and effective sense, "order" tenants to vacate it. In denying this, plaintiffs would deprive the written order clause of its original and obvious purpose of protecting those who move in anticipation of an acquisition, whether or not the acquisition ultimately takes place.



The close relationship in the Department regulations between the written notice or order and the acquisition accords with the guidelines to the construction of the Relocation Act published by the General Services Administration in 1974. The GSA guidelines, which must be followed by all federal agencies in applying the Act,[26] provide that in order to qualify for relocation benefits, a person must have moved as a result of an acquisition or

> as a result of the receipt of a written notice to vacate which may have been given before or after initiation of negotiations for acquisition of the property as prescribed by regulations issued by the head of the Federal agency * * *.

General Services Administration, *Federal Management 74-8, Attachment A, ch. 1.2c(2)(a): Guidelines for Agency Implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646* 2 (1974).[27] Thus, while the GSA guidelines give each agency some freedom to prescribe the timing of the written notice or order to vacate, they once again underscore the point that the written notice or order does not stand on its own: it must be issued in connection with an acquisition or proposed acquisition of property in order to satisfy the requirements of the statutory definition of "displaced person."

[26] See Executive Order No. 11717, 3 C.F.R. 766 (1971-1975 Compilation).

[27] The GSA guidelines were subsequently codified as 34 C.F.R. Part 233.

## II.

## THE DEPARTMENT'S ACQUISITION OF SKY TOWER AND RIVERHOUSE TOWERS WAS NOT "FOR A PROGRAM OR PROJECT" UNDERTAKEN BY A FEDERAL AGENCY

### A. It Is the Acquisition, Not the Written Order, That Must Be for a Federal or Federally Assisted Program Or Project

A second point of dispute about the proper construction of the definition of "displaced person" concerns the phrase "for a program or project undertaken by a Federal agency, or with Federal financial assistance." 42 U.S.C. 4601(6). Plaintiffs contend that the definition is satisfied if either the acquisition or the written order to vacate is "for a [federal] program or project." Again, we read the definition more restrictively. In our view, it is the acquisition that must be "for a program or project," not the written order to vacate.

In large part, our argument on this point follows from the analysis in Part I, *supra*. As we explained there, the written order clause was a substitute for the phrase "or reasonable expectation of acquisition" in both the Senate and House bills. In each of the earlier versions of the bill, then, it was clear that it was the acquisition of property that had to be for a federal program or project.

The House Committee's insertion of the written order clause did not alter the definition in this respect. The House Report is unambiguous on this point. It states:



> It is immaterial whether the real property is acquired before or after the effective date of the bill, or by Federal or State agency; or whether Federal funds contribute to the cost of the real property. *The controlling point is that the real property must be acquired for a Federal or Federal financially assisted program or project.*

H.R. Rep. No. 91-1656, *supra*, at 4 (emphasis added).

The structure of the definition of "displaced person" similarly supports the view that it is the acquisition that must be "for a [federal] program or project." The written order clause functions as an appositive to the acquisition clause, not as a parallel clause. It provides for a written order as a permissible connection between the acquisition and the displacement; it does not elevate the particular connection, or means of displacement, to an independent event that has its own statutory consequences without regard for the presence of an acquisition. The written order clause is in essence parenthetical, so that the definition should be interpreted as if it read:

> The term "displaced person" means any person who * * * moves from real property * * * as a result of the acquisition of such real property * * * (or as the result of the written order of the acquiring agency to vacate real property) for a program or project undertaken by a Federal agency * * *.

Accordingly, even if plaintiffs were in some sense ordered to move for a federal program or project, that would not satisfy the definition of "displaced per-

son" unless the property was acquired for that program or project. *Caramico* v. *Secretary of the Department of Housing and Urban Development*, *supra*, 509 F.2d at 698-699; *Harris* v. *Lynn*, 411 F. Supp. 692 (E.D. Mo. 1976), opinion adopted, 555 F.2d 1357, 1359 (8th Cir.), cert. denied, 434 U.S. 927 (1977). The Department's regulations are in accord. 24 C.F.R. 42.20(d)(2).

**B. The Acquisitions in These Cases Were Not for a Federal Program Or Project**

The Department of Housing and Urban Development acquired Sky Tower and Riverhouse Towers only after a default by the project sponsor and assignment to the Department of either the mortgage (in the case of Riverhouse Towers) or title to the property (in the case of Sky Tower). Both acquisitions occurred because the purpose of the Department's program—to encourage private construction and maintenance of low-income housing—met with failure. The Department thus did not acquire the properties for a federal program or project; instead, the acquisitions in both instances marked the last step in the failure of a private program to which the Department had extended direct and indirect financial support.[28]

As the court of appeals stated in *Caramico* v. *Secretary of the Department of Housing and Urban Development*, *supra*, 509 F.2d at 698, acquisitions of

[28] See note 6, *supra*.



this kind are "random and involuntary"—not the kind envisioned by the Relocation Act. The *Caramico* court noted that the Relocation Act

> contemplates normal government acquisitions, which are the result of conscious decisions to build a highway here or a project or hospital there. In such cases, the acquisition of property and the relocation of certain individuals is a necessary first step in the project. Default acquisitions by the FHA, however, embody no conscious governmental decision at all.

*Id.* at 698-699.

Plaintiffs quarrel with the application of the analysis in *Caramico* to these cases, contending that neither of the acquisitions here was truly involuntary. The acquisition in *Alexander*, plaintiffs point out, came in the course of a foreclosure sale, and the acquisition in *Cole* occurred only after the Department had declined to increase the mortgage insurance coverage for a second time. While the acquisitions may not have been involuntary in the sense that the Department had no choice but to acquire the property, the acquisitions were indisputably made in contexts in which the Department was forced to elect between two unattractive alternatives, and it chose what it perceived as the lesser evil. Such acquisitions, made in order to make the best of a bad situation, are not in any realistic sense made "for a [federal] program or project."

The Relocation Act was intended to provide benefits in the case of acquisitions of a different character. The acquisitions envisioned by the Act are acquisitions

involving a governmental "taking" for a "public use." As we noted in Part I, *supra*, the land acquisition and the relocation provisions of the Relocation Act had been closely related from the time that the Select Subcommittee first proposed that land acquisition policies and relocation assistance be treated in a single piece of legislation. In view of the Subcommittee's joint treatment of the two problems, it is not surprising that the acquisitions for which relocation payments were envisioned were acquisitions of property "for public use." See *Select Subcomm. Study*, *supra*, at 151 (Fair Compensation Act, Section 107(a)).

The relationship between the concept of "public use" and the kinds of "programs or projects" for which relocation benefits were intended is equally evident in the legislative materials accompanying the final version of the Relocation Act. The House Report on the Act stated:

> The need for [relocation benefits] arises from the increasing impact of Federal and federally assisted programs as such programs have evolved to meet the needs of a growing and increasingly urban population. In a less complex time, Federal and federally assisted public works projects seldom involved major displacements of people. There was relatively little taking of residential or commercial property for farm-to-market routes or for reservoirs or public buildings. Indeed, local support for such projects often resulted in little, if any, cost for land acquisition or right-of-way. However, with the growth and



> development of an economy which is increasingly urban and metropolitan, the demand for public facilities and services has increasingly centered on such urban areas, and the acquisition of land for such projects has become the most difficult facet of many undertakings by public agencies. Also, a major public project—be it a highway, urban renewal project, or hospital—inevitably involves the acquisition and clearance of sites which now provide residential, commercial or other services.

H.R. Rep. No. 1656, *supra*, at 2. Similarly, according to the Senate Report, the bill was designed "to permit the Federal Government to deal consistently and fairly with all those whose property is taken for public projects and all those who are displaced from their homes and businesses." S. Rep. No. 91-488, *supra*, at 2. Moreover, in discussing the definition of the term "displaced," the Senate Report characterized the program or project for which an acquisition must be intended as being "for a public improvement constructed or developed by or with funds provided in whole or in part by the Federal Government." *Id.* at 9. Accordingly, because the acquisitions of Sky Tower and Riverhouse Towers were not intended to serve a "public use" of the kind associated with a "taking" of the property by the federal government, the acquisitions do not satisfy the requirement that they be made "for a [federal] program or project."

The *Cole* plaintiffs argue (77-1463 Br. 30-33) that if the Relocation Act requires that the acquisition be

"for a [federal] program or project," the acquisition in this case qualifies under that test because it was "a fully expected and consciously planned-for result of the Section 236 [housing] program." In essence, plaintiffs' argument is that defaults were anticipated under the Section 236 mortgage insurance program, and the consequent "acquisition" of Sky Tower was therefore not random and involuntary, but "definitely voluntary and deliberate" (77-1463 Br. 33).

Section 236 of the National Housing Act, 12 U.S.C. 1715z-1, is the provision under which the Sky Tower mortgage was insured. Naturally, in providing for mortgage insurance, Congress anticipated that occasional defaults would occur. But the expectation that some defaults, foreclosures, and transfers of title to the Department would occur does not render those acquisitions "for a program or project." The acquisitions occur as the result of predictable but unfortunate *failures* in the mortgage insurance program; they are not any part of the *purpose* of the program. It stretches the terms beyond recognition to characterize the default acquisitions in these cases as "voluntary and deliberate" in the same sense as acquisitions of private property for a highway or a hospital.[29]

[29] On plaintiffs' theory, a person defaulting on any federal housing loan would be entitled to relocation benefits if the federal agency acquired the property following the default. The acquisition would be "for" the housing loan program.



### C. The Distinction Between Persons Displaced by Acquisitions and Persons Displaced by Other Federal Action Is a Rational One

Plaintiffs suggest that the interpretation of the Relocation Act advanced by the government is a "miserly" one that does not fairly serve the purposes or policies for which the Act was designed.[30] But as we have argued, Congress intended in this Act to address only the problem of displacements caused by acquisitions of property—either through condemnation or negotiation—for public projects. Congress did

[30] In support of their contention that our construction of the Act is unduly restrictive, the *Cole* plaintiffs have cited Section 206(b) of the Act, 42 U.S.C. 4626(b), which requires that replacement housing be available before any person is required to move from his dwelling "on account of any Federal project." Plaintiffs assert that "it is clear from the facts" that the Department violated this provision. But Section 206(b) is not at issue in this case. The district court held, on other grounds, that the Department had improperly ordered the Sky Tower tenants to vacate the project. *Cole* v. *Lynn*, 389 F. Supp. 99 (D. D.C. 1975). The only issue certified for appeal was the question of the eligibility of the tenants for relocation benefits.

In any event, it is not "clear from the facts" that the Department violated Section 206(b) of the Act when it ordered the Sky Tower residents to vacate the project. For one thing, that section applies only when persons are ordered to move "on account of [a] Federal project," which is properly read *in pari materia* with the phrase "program or project" in Section 101(6) of the Act. Since Sky Tower was not acquired "for a [federal] program or project," Section 206(b) is not applicable. Moreover, the section requires only that the Secretary be satisfied that replacement housing is available. The question whether such housing is in fact available is not one for the courts to address in the first instance. See *Katsev* v. *Coleman*, 530 F.2d 176, 181 (8th Cir. 1976).

not address the difficult and quite different problem of displacement of tenants from property that is owned by a federal agency.

Because that is a different problem, adopting plaintiffs' interpretation of the Act would invite anomalous results. We have already suggested some examples: the tenants who fail to pay their rent and for that reason are ordered to move from federal property; the military personnel displaced from on-base living quarters when the base is closed or when the service decides to demolish those quarters or convert them to another use; the state university that decides to convert its long-owned residential property to college dormitories with the aid of federal funds, or to convert a dormitory to a federally financed laboratory or other facility. In all these cases the plaintiffs' theory of the written order clause in the Relocation Act would apparently require payment of the Act's benefits. It is unlikely that Congress intended any such results.

Moreover, under plaintiffs' construction of the Act, the agency acquiring the property after a default could avoid any obligation to pay relocation benefits by insisting that the mortgagee deliver the property unoccupied, as was done in the *Caramico* case (509 F.2d at 696). Inducing agencies to take this step in order to avoid the obligations of the Relocation Act would serve no discernible policy interest and might well result in greater hardship to the affected tenants.

The Department recognizes, of course, that persons displaced from government property may suffer



greatly by virtue of displacement. The Secretary of Housing and Urban Development is now examining measures that would provide some level of benefits to persons who are required to move from a Department-owned housing project but who do not qualify for benefits under the Department's interpretation of the Relocation Act. She is considering whether the Department can provide such assistance by regulation under existing program statutes or whether it must seek new legislation and authorization for funding. The appropriate eligibility criteria and levels of assistance for each kind of displacement are also under study.

Persons displaced from federally owned property may well be proper subjects for financial assistance in the future, either through legislation or administrative action. Such assistance may also be made available to persons displaced from state or even privately owned property to make way for projects receiving federal financial assistance. The Relocation Act as now written, however, does not go that far.

## CONCLUSION

The judgment of the court of appeals in No. 77-874 should be affirmed.

The judgment of the court of appeals in No. 77-1463 should be reversed.

Respectfully submitted.

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FOR ARGUMENT



IN THE
# Supreme Court of the United States
OCTOBER TERM, 1978

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**No. 77-874**

GENANETT ALEXANDER, *et al.*, *Petitioners*,

v.

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT *et al.*, *Respondents*.

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**No. 77-1463**

PATRICIA ROBERTS HARRIS, SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *et al.*, *Petitioners*,

v.

SADIE E. COLE *et al.*, *Respondents*.

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ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE SEVENTH CIRCUIT AND THE DISTRICT OF COLUMBIA CIRCUIT

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# REPLY BRIEF FOR PETITIONERS GENANETT ALEXANDER *et al.*, AND RESPONDENTS SADIE E. COLE *et al.*

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**IN THE**

# Supreme Court of the United States

**OCTOBER TERM, 1978**

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**No. 77-874**

GENANETT ALEXANDER, *et al., Petitioners,*

v.

UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT *et al., Respondents.*

---

**No. 77-1463**

PATRICIA ROBERTS HARRIS, SECRETARY OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, *et al., Petitioners,*

v.

SADIE E. COLE *et al., Respondents.*

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**ON WRITS OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE SEVENTH CIRCUIT AND THE DISTRICT OF COLUMBIA CIRCUIT**

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## REPLY BRIEF FOR PETITIONERS GENANETT ALEXANDER *et al.*, AND RESPONDENTS SADIE E. COLE *et al.*

This reply brief is being filed for the petitioners in No. 77-874 and the respondents in No. 77-1463, who are referred to collectively, for convenience, as the "tenants."

All parties agree that Relocation Act benefits and services can be triggered under either the "written order" clause or the "acquisition" clause of the definition of "displaced person," that in either case there must be an acquisition (or a proposed but unconsummated acquisition) of property, and that in either case there must be a Federal (or Federally assisted) "program or project."

The principal remaining issue between the tenants, on the one hand, and the Government on the other is the scope of the "written order" clause.[1] The Government contends that it covers only two cases: (a) persons who move from their homes after receiving "written notice" that an agency intends to acquire the property, even if the acquisition does not take place; and (b) persons who are ordered to move after the acquisition takes place but only if the order to move is connected with the "program or project" that led to the acquisition.[2]

We have two answers. First, we contend that the tenants who were evicted from Riverhouse and Sky Tower fit within the second of these cases, *i.e.*, that the HUD property disposition program that led to their displacement is connected with HUD's acquisition of these two housing projects. Second, however, we do not agree that there must be such a connection; we think the plain meaning and purpose of the "written order" clause show that it is triggered when there is an acquisition and then an order to move that results from a Federal "program or project" not connected with the acquisition.

[1] "'The term 'displaced person' means any person who . . . moves from real property . . . as the result of the written order of the acquiring agency to vacate real property, for a program or project undertaken by a Federal agency, or with Federal financial assistance; . . . " 42 U.S.C. § 4601(6).

[2] After some earlier suggestions that the "written order" clause covers only pre-acquisition orders to vacate, the Government concedes that a post-acquisition order to vacate can fall within the clause in some circumstances. (Gov't Br. 52 and n.25)



### A. HUD DISPLACED THESE TENANTS FOR A FEDERAL "PROGRAM OR PROJECT" CONNECTED WITH THE ACQUISITIONS.

The HUD decisions to evict the Riverhouse and Sky Tower tenants were related to HUD's acquisition of those properties. In each case HUD acted pursuant to a plan that is anchored in its own rules and guidelines controlling the disposition of multifamily projects acquired by HUD upon a mortgage default. *See* 24 C.F.R. Part 290, "Disposition of HUD-Owned Multifamily Projects"; PROPERTY DISPOSITION-HANDBOOK – MULTIFAMILY PROPERTIES, RHM 4315.1.[3]

These rules and guidelines expressly provide that HUD should conduct an elaborate financial and programmatic analysis of the housing being acquired and, on the basis of that analysis, should determine whether (1) to sell the property, with or without HUD rental subsidies, 24 C.F.R. § 290.20, (2) to sell to a cooperative or to sell the units individually (perhaps converting the property to a condominium), with or without HUD financing or subsidies, *id.* § 290.30(b), or (3) to demolish the project, *id.* § 290.30(d). When feasible, this analysis should be started before HUD decides to foreclose on the defaulted mortgage. *Handbook*, *e.g.*, paras. 21, 27, 36.

In the case of Riverhouse, the project involved in *Alexander*, Hud took an assignment of the defaulted mortgage in December 1970. In May 1973, HUD decided to initiate foreclosure proceedings. A court-appointed receiver operated the project until August 1974, when HUD bought the property at the foreclosure sale. At about that time, the

[3] The *Property Disposition Handbook* was adopted in February 1971, the month after the effective date of the Relocation Act. The regulations in 24 C.F.R. were adopted in January 1977 and are "basically a codification of the rules contained in" the *Handbook*. 42 Fed. Reg. 5049, 5050 (Jan. 27, 1977).

city fire department and the chief elevator inspector reported a variety of unsafe conditions and recommended numerous corrections. HUD, upon making the analysis referred to in the preceding paragraph, decided that, as between rehabilitating the project and selling it, the financially more advantageous alternative was to close (but not demolish) Riverhouse and sell the property, although it determined to hold off submitting its final disposition program until this litigation was resolved. In November 1974, HUD caused "written orders" of eviction to be sent to the tenants, and it has now sold the property to a private developer.

In the case of Sky Tower, the project involved in *Cole*, the pattern is similar although the details are different. In that case, HUD "insisted on foreclosure" in June 1973. 389 F. Supp. at 101. HUD thereafter operated Sky Tower for over a year while it considered the costs of the various alternatives open to it. Finally it decided, as in the case of Riverhouse, that the cost of further rehabilitation was greater than what the property could support financially, and it decided to demolish the buildings and sell the land for private development in accordance with a District of Columbia "master plan" to eliminate blight.

In short, in both cases HUD made a considered choice among several alternatives. In both cases, the costs of the alternatives — but not including the costs of complying with the Relocation Act — were central to that decision. In both cases, the decision to sell the project was pursuant to the HUD property disposition program for properties acquired after mortgage default. Thus, in both cases, the decision to evict the tenants and sell the project was the direct result of the acquisition of the mortgaged property.

This means that under the Government's own analysis these tenants qualify as "displaced persons" under the Relocation Act.



### B. TENANTS WHO ARE DISPLACED FOR A FEDERAL "PROGRAM OR PROJECT" NOT CONNECTED WITH THE ACQUISITION ARE "DISPLACED PERSONS."

Although we have shown that the Federal "program or project" that caused the tenants to be displaced was the same program that resulted in acquisition, we do not agree that such a connection is part of the definition of "displaced person." In our view, the structure of the definition is a parallel structure: One is displaced if one moves *either*

— (a) as the result of an acquisition that is for a Federal program or project,

*or*

— *(b)* as the result of a written order to move, issued by the acquiring agency, that is for a Federal program or project.

Thus, under the plain meaning of the words, if an agency has acquired property and then issues written orders to move for a program or project, persons displaced by the written orders fall within the definition.

The Government argues instead that the written order clause is not parallel but appositive to the acquisition clause. (Gov't Br. 55) We think this is simply incorrect grammar. "Apposition" is defined as "a grammatical construction in which two usually adjacent nouns having the same referent stand in the same syntactical relation to the rest of the sentence (as *the poet* and *Burns* in 'a biography of the poet Burns')." WEBSTER'S NEW COLLEGIATE DICTIONARY. Thus, appositive clauses are not generally introduced by the word "or."[4] But of equal import is Congress' special

[4]The fact that the definition of "displaced person" contains the word "or" several other times in its ordinary, disjunctive sense shows that the same disjunctive meaning was intended for the "or" in question. Dumont v. United States, 98, U.S. 142l, 143(1878).

buttressing of the "written order" clause to avoid confusion. Congress not only used commas to signal a clear separation from the "acquisition" clause, but it also repeated the words "as the result of the" to emphasize that "written orders" function independently from "acquisitions." This careful syntax shows that Congress meant the "acquisition" clause and the "written order" clause to have independent and equal relationships to the core clause of the sentence, "any person who moves . . . for a program or project."

The Government also argues that the word "acquiring" in the "written order" clause means "is engaged in an acquisition," *i.e.*, that only written orders issued while an acquisition is in progress are within the statutory definition. This approach, however, would totally bar orders issued after acquisition has taken place, and the Government concedes that in some circumstances post-acquisition orders are covered. (Gov't Br. 52 n.25) Indeed, in their reply to the opposition to certiorari in *Cole*, the Government expressly denied arguing that there cannot be a "time lag" between acquisition and displacement. (Gov't Reply Mem., No. 77-1463, p. 4) *Cf.* H.R. Rep. No. 1656, 91st Cong., 2d Sess. 8 (1970) (noting the possibility of an "unusually long time lag between the public announcement of a project and the displacement"). Moreover, the so-called Murray Hill provision, Section 219 (uncodified), and its legislative history make clear that a lengthy delay between acquisition and displacement is no bar to eligibility for Relocation Act assistance.[5]

[5]In hearings on the proposed Relocation Act, New York Congressman (now Mayor) Koch drew attention to families and businesses that were to be displaced by the Government's acquisition,



To test the argument that the dispositions must be connected with the acquisitions, it is necessary only to pose the following case: Suppose the Government acquires land for one purpose, holds the land for a time, and then adopts an entirely different purpose and evicts the tenants (or homeowners or businessmen or farmers); are the rights of these displaced persons to be defeated because of the Government's change of plan? Certainly not. These persons are as much the victims of a displacement decision that is made for the benefit of the public as a whole as they would have been if the Government had carried out its original plan.[6]

many years earlier, of land in the Murray Hill section of New York City. *See, e.g., Uniform Relocation Assistance and Land Policies Act of 1969: Hearings before the Subcommittee on Intergovernmental Relations of the Senate Committee on Government Operations*, 91st Cong., 1st Sess. 164-69 (1969). Because the displacements were expected to occur before the Act's effective date (which was then to be 90 days following enactment), Section 219 was added deeming these families and businesses "displaced persons" if they were displaced after January 1, 1969, and before the 90th day following the date of enactment. 84 Stat. 1903. No special language was included to cover the time lag between acquisition and displacement, for the simple reason that none was needed.

[6]The HUD regulations do not provide that the program or project that causes displacement must be the program or project that led to acquisition. Instead, displacement is covered if, *inter alia*, it

> "is a result of:
>
> * * *
>
> (2) the written order of the acquiring agency to vacate such property for *a* project;****." 24 C.F.R. § 42.55(e) (emphasis added).

As we showed in our opening briefs, the dominant theme to emerge from the extensive hearings on the Relocation Act was that persons evicted from their homes by virtue of Government action (often land acquisition) should be adequately and uniformly compensated for their losses. Congress was concerned that the victims of displacement were being treated differently under similar circumstances and that, generally, the assistance provided was insufficient to meet hardships imposed. Moreover, Congress was impressed by the fact that displacements of thousands of people were occurring without any assurance that alternative, affordable housing was being provided by the private housing market. Thus, it was the hardships caused by displacement rather than the precise means by which people were displaced which formed the essential concern of Congress. This central concern became the theme of the Act, as expressed by the "Declaration of Policy":

> "The purpose of this subchapter is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole." Section 201, 42 U.S.C. § 4621.[7]

[7]The Government acknowledges that the "Declaration of Policy" does not contain a qualification that was contained in the 1969 bill and that would more easily have supported HUD's restrictive view. The 1969 version established a policy protecting persons "displaced by the acquisition of real property." S. 1, Section 201, 115 Cong. Rec. 31372 (1969). The Act as finally passed broadened the policy statement and eliminated the reference to acquisitions. The Government tries to avoid the impact of this change by noting language in the 1970 House Committee Report that the bill "provides for relief of the economic dislocation which occurs in the acquisition of real property for Federal or federally assisted programs." H.R. Rep. No. 1656, *supra*, at p.3. But this statement cannot limit the coverage of the Act. At most, it is an expression of particular concern for one aspect of the Government's forced displacement problem, "but does not establish that Congress in fact legislated with reference to [it] exclusively." Commissioner v. Korell, 339 U.S.619,626(1950).

> "The plain words and meaning of a statute cannot be overcome by a legislative history which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction." Gemsco, Inc. v. Walling, 324 U.S. 244, 260 (1945).



And in the case of persons displaced from their homes, Congress made it especially clear that displacements should never occur for a program or project unless adequate, affordable replacement housing was available. Section 206(b), 42 U.S.C. § 4626(b). Neither in Section 201 nor in Section 206(b) did Congress condition its concern on the existence of an acquisition, let alone provide that only displacements caused by programs or projects that lead to acquisitions are intended to be covered.

The Government does not contend that its narrow interpretation of the "written order" clause is compelled by the statutory language. It does contend that our "equally plausible" interpretation (Gov't Br. 22) is incorrect because, citing the principle of statutory construction outlined in *United States* v. *American Trucking Ass'n*, 310 U.S. 534, 543 (1940), our interpretation (1) would lead to "absurd or futile" results and (2) would be "plainly at variance with" the structure and purpose of the Act.

In our view, the Government has utterly failed to sustain either of these exceptions to the plain meaning rule.

### (1) The "Absurd" and "Futile" Hypothetical Cases The Government Constructs Are Not Covered By Our Interpretation.

The Government constructs four hypothetical cases involving displacements from Federally owned or insured housing which it claims would produce Relocation Act benefits under our interpretation of the written order clause, in an effort to show that our interpretation would produce "absurd" or "futile" results (Gov't Br. 23-24). In truth, not one of these cases is covered by our interpretation.[8]

The first three cases relate to persons ordered to move because of their own failure: to abide by project rules, to pay rent, or to make mortgage payments. We cannot understand how any sensible interpretation of the Relocation Act could provide benefits to such persons. These are not the innocent victims of Government programs; they are instead displaced because they have broken contracts. Congress plainly did not intend them to be covered, and it made that clear by covering only displacements that are "for a program or project." Those words simply mean that the agency in question must make some programmatic decision with regard to the property that requires

[8]Noting that the Relocation Act also applies to State projects undertaken with Federal financial assistance, the Government also suggests that our interpretation would make the Act applicable to a State university's use of Federal funds to convert a dormitory or faculty housing to another use. (Govt' Br. 24 & n.8) We do not see that result as "absurd" or "futile," although we think it likely that the university would see that the students or faculty would have suitable, affordable replacement housing before taking such a step. Moreover, students in college dormitories are simply not "tenants" in "dwellings" for purposes of the Relocation Act.



displacing tenants or homeowners or businesses or farmers — whether it be the construction of a hospital or highway or the rehabilitation or sale of a housing project. Those are "programs or projects." Evicting a tenant for nonpayment of rent is not.

The fourth hypothetical case the Government constructs is of a different kind but is also not covered. This concerns the Army closing a base and thus ordering occupants of on-base housing to move (or terminating on-base housing to make room for another activity). We think the relationship between military personnel and their housing is entirely different from the ordinary situation, for the Army is both landlord and employer. On-base housing is usually provided without charge, and the military normally pays all moving expenses when it transfers its personnel from one location to another. Moreover, we strongly doubt that the Army would terminate on-base housing without first determining that those who are evicted have other housing available. Finally, military personnel fully expect that they will be transferred from place to place for a variety of reasons and thus cannot think of a particular base — let alone a particular barracks — as "home" in the ordinary sense.

In short, we think the Government's efforts to show that our interpretation of the "written order" clause can lead to "absurd" or "futile" results is so lacking in merit as to provide strong support for our position.

### (2) Neither the Structure Nor The Purpose Of The Statute Suggests That Congress Intended To Exclude Tenants Who Are Displaced From Subsidized Housing That Is Acquired By The Government.

The Government makes much of the fact that the "substantive" sections of the Relocation Act use language which suggests that an *acquisition* must result in displacement before the particular service or benefit is triggered. From

this the Government contends that if the displacement occurs because of a program or project unconnected with the acquisition, then the acquisition did not result in the displacement and, *ergo*, the Relocation Act service or benefit is not available.

Once again the Government fails to keep faith with Congress' purpose — to alleviate the burdens on persons displaced by Federal programs, Section 201, 42 U.S.C. § 4621 — and treats the words of the statute as hurdles that must be jumped.

HUD's view that Relocation Act services are available only to those who move as a result of acquisition of real property is, moreover, inconsistent with its own interpretation of the "written order" clause. Thus, Section 202, 42 U.S.C. § 4622, provides that moving and related expenses are payable when "the acquisition of real property ...will result in the displacement of any person...." Section 205, 42 U.S.C.§4625, contains similar language with respect to relocation assistance advisory services. There is not a single reference in these sections to "proposed but unconsummated acquisitions." Yet HUD asserts that persons who are displaced by a "written notice" of intent to acquire are covered by the "written order" clause, and hence are covered by Sections 202 and 205, *even if no acquisition takes place.*[9]

We agree with this interpretation of the "written order" clause. The legislative history, cited in the Government's

[9] "By virtue of the written order clause, there is no need to wait for the acquisition actually to take place before the benefits become available under these sections, and their availability does not depend on whether the acquisition does ultimately take place." (Gov't Br. 30)



brief (pp. 42-44), makes perfectly clear Congress' intention to cover such cases, even though not a word in the Act includes them. Congress intended the word "acquisition" in Sections 202 and 205 to be read not literally but as a shorthand for the entire concept embraced by the definition of "displaced person," and even to include a case where there is no acquisition at all. (See the decision below in *Cole*, 571 F.2d at 597, n.32; p. 15A, n.32) In other words, on the Government's view, this pivotal definition was intended to broaden the coverage of the Act well beyond what the bare words of Sections 202 and 205 provide. That is our view as well.

The Government also contends that its view of the Act's coverage is buttressed by language in Section 204, 42 U.S.C. § 4624, which authorizes replacement housing payments only for tenants who occupied their homes for at least 90 days before "the initiation of negotiations for acquisition" of the dwelling. The Government observes that where, as in the case of Sky Tower, over 15 months elapsed between acquisition and displacement, tenants who moved into their apartments 18 or more months before being displaced would not be covered. This result the Government calls an "anomaly."

Of course any cutoff date fixed by statute creates a risk of "anomalous" results, if one compares situations immediately on either side of the cutoff. Thus, claiming that our interpretation produces an "anomaly" here says very little.

In any event, the result the Government suggests is by no means the most logical interpretation of the 90-day provision in Section 204.

For example, Section 217 of the Act, 42 U.S.C. § 4637, makes the act applicable in many situations in which no Government agency, State or Federal, contemplates any

acquisition at all but in which Government funds are used for a public purpose. These situations involve, for example, demolition of privately owned housing on the ground that it is structurally unsound or unfit for human habitation.[10] 24 C.F.R. § 42.55 (f), (h). In such cases, HUD regulations define "initiation of negotiations" for purposes of Section 204 to mean the date the person "vacates the dwelling." 24 C.F.R. § 42.95(b)(5)(i). In this definition, HUD is recognizing that the purpose of the 90-day provision — preventing persons from moving into a dwelling solely or chiefly to make themselves eligible for Relocation Act payments — is well served by having the 90 days date back from when the person moves out of the dwelling.

Similarly, the Senate Report, commenting on the analogous provision applicable to homeowners (Section 203, 42 U.S.C. § 4623), notes that despite the statutory requirement that the person occupy the dwelling for, in this case, 180 days "prior to the initiation of negotiations for the acquisition of the property," the person should be deemed eligible if he occupied the property after the project began

[10]The Government uses Section 217 as an argument against our interpretation of the "written order" clause. It says that if we were correct about the clause, Section 217 would not be needed. (Gov't Br. 31-32, 35-36) (The dissenting judge in *Cole* took the same position. See 571 F.2d at 611-12; pp. 46A-47A.) In fact, however, the principal purpose of Section 217 was to bring within the definition of "acquisition" the cases cited in the text, *which do not involve acquisitions by anyone*. We do not contend that the written order clause would apply in such cases (in the absence of Section 217).

In this connection, we agree with the Government (Br. 22 n. 6) that this case does not involve the question whether programs undertaken by private projects involving Federal financial assistance are covered by the Relocation Act, and thus there would seem to be no need for the Court to concern itself with that issue, which involves wholly different questions of statutory interpretation.



and for 180 days before moving. S. Rep. No. 488, 91st Cong., 1st Sess. 11 (1969).[11]

The point here is that if, as we contend, the Riverhouse and Sky Tower tenants are covered by the Act, HUD can arrive at a sensible means of dealing with the cutoff-date point, and the 90-day requirement accordingly poses no obstacle to the result for which we contend.

### C. THE TENANTS' SUGGESTED INTREPRETATION SHOULD NOT BE REJECTED MERELY BECAUSE IT COULD BE EVADED BY HUD.

As a final point, the Government suggests that HUD could evade the impact of any decision adopting the tenants' suggested interpretation by creating a "vacant delivery"-rule. (Gov't Br. 62)[12] Such a rule presumably would state that the holders of HUD-insured mortgages on multi-family housing projects — including FNMA, banks, etc. — could make claims on their insurance policies only if they first evicted all the tenants. The rule presumably would have to apply in all cases, including those where HUD would be likely to continue the project as subsidized housing for low-income families, because the ultimate disposition to be made would not always be known at the time of mortgage default.

We do not think the Court should shrink from adopting our suggested interpretation of the written order clause merely because HUD could evade the impact of such a decision by this Court. We are aware of no authority for such a rule of statutory construction, and the Government cites none.

[11]The Senate Report refers to a 1-year period, as did the bill at that time.

[12]*See also* the petition for certiorari in *Cole*, p. 17.

Moreover, we think it unlikely, despite this suggestion in the Government's brief, that HUD would adopt such an evasive tactic. *First*, the brief elsewhere states that the Secretary is attempting to lessen the burdens on tenants of HUD-owned housing who are displaced by HUD programs, even when the Relocation Act does not apply. *Second*, in the one case we know of where a vacant delivery requirement has been adopted — defaults in the Section 203 mortgage insurance program, 24 C.F.R. § 203.381 (the program involved in *Caramico*) — HUD has rescinded the requirement. 41 Fed. Reg. 43094 (Sept. 29, 1976). *Third*, we believe it would not be consistent with the goals of the national housing laws to adopt a rule that would cause wholesale eviction of tenants from HUD-subsidized housing projects for no reason other than to evade a decision making the Relocation Act applicable. *Finally*, we think the Congress has made it crystal clear that it expects executive branch officials to adopt an entirely different approach. Thus, in the principal House Report on the Relocation Act, the Committee on Public Works said this:

> "The Committee believes that this bill as reported provides for relief of the economic dislocation which occurs in the acquisition of real property for Federal and federally assisted programs. The tools in the reported bill are adequate to deal with the problem. *The Congress, however, can only provide such tools. Their effective use depends upon the attitudes and skill of the officials in the executive branch of the Government responsible for their administration. The principal of adequate housing, for example, will require not only the use of the more liberal financial allowances authorized by the reported bill, but also imagination, ingenuity and a desire on the part of its administrators to translate this authorization into equitable and satisfactory conditions for the people affected.*" H.R. Rep. No. 1656, *supra*, at p. 3 (emphasis added).



Elsewhere in the same Report, the Committee cites the need for "faithful execution" of the Act by agency heads (as a substitute for judicial review of administrative payment decisions), *id*. at p. 5, and the need for "positive support by all concerned with the implementation of the bill" in providing for relocation advisory assistance, one of the "key elements of any successful relocation effort," *id*. at p. 13. Earlier this year, moreover, the Congress emphasized that HUD should take special care to minimize displacements where HUD acquires housing projects following mortgage defaults and to provide maximum relocation assistance and relief where displacement is unavoidable. Housing and Community Development Amendments of 1978, §§ 203(a)(d), 902, Pub. L. 95-557, ____ Stat. ____ (1978).

In short, we think the suggestion that evasion of the Act may occur if the tenants prevail can be ignored by the Court.

## CONCLUSION

For the reasons set forth herein and in the opening briefs for the tenants, the Court should reverse the decision below in No. 77-874 and should affirm the decision below in No. 77-1463.

Respectfully submitted.

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